

# Your Wish is Pome-granted

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About 20 years ago, Kellogg's unveiled an ad campaign for their Apple Jacks cereal. The commercials featured an authority figure, typically a parent, asking a bunch of kids why they were eating Apple Jacks when they didn't even taste like apples. The rebellious kids reply that the cereal doesn't have to taste like apples because "we eat what we like."

Part of the reason Apple Jacks don't taste like apples is because they aren't crammed with fruity ingredients. In fact, Apple Jacks contain less than 2% of dried apples and apple juice concentrate. While the kids don't seem to care, maybe a competitor, like General Mills, the manufacturer of Apple Cinnamon Cheerios, might now consider taking Kellogg's to task for not having enough apples.

In 2008, juice maker Pom Wonderful sued Coca-Cola Co. for false advertising. Pom Wonderful brought the suit after steadily losing its market share to Minute Maid's "Pomegranate Blueberry Flavored Blend of 5 Juices" drink made by Coke. The drink's label prominently displays the words "Pomegranate Blueberry" in bigger print and includes a picture of a large pomegranate set among other fruits.

Pom Wonderful's suit claimed Coke was misleading the public, as their drink contained only 0.3% pomegranate juice, 0.2% blueberry juice and 0.1% raspberry juice. Because the other 99% consists of apple and grape juice, Pom Wonderful asserted Coke violated trademark law by branding their juice as "Pomegranate Blueberry."

The 9<sup>th</sup> U.S. Circuit Court of Appeals ruled in favor of Coke, finding that food labeling laws preclude private lawsuits under trademark law. The U.S. Food and Drug Administration is tasked with enforcing label standards on foods and drinks. Because the Minute Maid juice complied with the FDA's labeling laws, the court rejected Pom Wonderful's claim.

Pom Wonderful appealed to the U.S. Supreme Court. The land's highest court reversed earlier rulings and found in favor of Pom Wonderful. The court held that while Coke may have conformed to FDA rules, the juice's label could still mislead consumers. Justice Anthony Kennedy, who authored the court's opinion, indicated during oral arguments that the label led him to believe the drink was mostly pomegranate juice.

The court held that the FDA regulation of food labels doesn't preclude competitors from suing for trademark violations under the Lanham Act, which precludes unfair competition based on false or misleading claims. As a result of the court's ruling, Pom Wonderful is allowed to proceed with its trademark lawsuit against Coke.

While the suit may seem like a petty squabble between competing juice makers, the court's ruling may actually change the landscape of trademark law. Until now, food manufacturers only had to worry about complying with FDA rules when labeling their products. As a result of the court's ruling, now competitors can sue one another for misleading labels even if they comply with FDA regulations. Experts fear courts will be overrun with such lawsuits which will eventually erode the authority of the FDA.

Ironically, the U.S. Federal Trade Commission has a pending lawsuit against Pom Wonderful for deceptive trade practices arising from claims that its pomegranate juice can treat or prevent heart disease, prostate cancer and other illnesses.

Who knew the juice industry was so diabolical?

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