

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 09-567 AHM	Date	November 18, 2009
Title	POM WONDERFUL LLC v. WELCH FOOD, INC., <i>et al.</i>		

Present: The Honorable A. Howard Matz

Stephen Montes	N/A	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
No Appearance	No Appearance

Proceedings: IN CHAMBERS (No Proceedings Held)

I. INTRODUCTION

This Order concerns Plaintiff POM Wonderful LLC (“POM”)’s Motion to Dismiss several of Defendant Welch Foods, Inc. (“Welch”)’s false advertising counterclaims (Doc. No. 48), POM’s Motion to Strike certain material from Welch’s Answer and Counterclaims (“Counterclaims”) (Doc. No. 46), and POM’s Motion to Sever Welch’s Counterclaims. (Doc. No. 49.) The parties are familiar with POM’s claims and Welch’s counterclaims and it is unnecessary for this Court to reiterate them. On November 2, 2009, Judge Pregerson issued an Order in *POM Wonderful, LLC v. Ocean Spray Cranberries, Inc.*, CV 09-565 (DDP) (“*POM v. Ocean Spray*”) dealing with very comparable motions. The Court adopts by reference his articulation of the elements and standards applicable to these motions. For the following reasons, the Court DENIES POM’s Motion to Sever, GRANTS in part POM’s Motion to Dismiss, and GRANTS in part and DENIES in part POM’s Motion to Strike.

II. ANALYSIS

A. Motion to Sever

Unlike Ocean Spray, Welch does not oppose POM’s Motion to Sever its three false advertising counterclaims. (Opposition at 11.) Nevertheless, this Court DENIES

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POM's Motion to Sever. The reasons that Judge Pregerson stated in his order denying POM's severance motion are cogent and equally applicable here, and the Court adopts them by reference.

B. Motion to Dismiss

Welch's Counterclaims allege that POM, through its advertising, has made several false or misleading claims in violation of the Lanham Act (Counterclaims ¶¶ 56-62), Cal. Bus. & Prof. Code §§ 17500 *et seq.* (Counterclaims ¶¶ 63-71) and Cal. Bus. & Prof. Code §§ 17200 *et seq.* (Counterclaims ¶¶ 72-82.) Welch points to POM's representations that its products: (1) prevent or mitigate atherosclerosis, heart attacks, and related heart condition (Counterclaims ¶¶ 20-21); (2) prevent or mitigate cancer and other prostate-related health condition, (*Id.* at ¶¶ 22-29); (3) prevent or delay aging (*Id.* at ¶¶ 30-32); (4) prevent or cure other diseases (*Id.* at ¶¶ 33-41); and (5) have nutritional value and disease-related benefits that are superior to other juices (*Id.* at ¶¶ 49-55). POM contends that the latter three categories of alleged false advertising fail to state a claim on which relief can be granted because the representations constitute "non-actionable puffery." Welch is prepared to have those claims dismissed, but it seeks a ruling that would contain language it believes would undermine POM's claims against it. (POM does not move to dismiss the first two categories of allegedly false claims, because it characterizes those claims as outside the scope of "puffery.")

In their respective papers, both POM and Welch have sought to engage in amusing maneuvers, such as about the other side's supposed admissions. Their protestations are funny but irrelevant. So, I GRANT POM's Motion to Dismiss Welch's three false advertising counterclaims but only as they pertain to the latter three categories of false advertising allegations. Welch will be entitled to invoke such doctrines as estoppel and law of the case if POM hereafter seeks to assert any position inconsistent with the ones it proffered in support of this Motion.

C. Motion to Strike

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POM asks the Court to strike both Welch’s unclean hands affirmative defense and its request for punitive damages. With respect to Welch’s unclean hands affirmative defense, the legal and factual arguments presented by both parties are basically the same as those presented by the parties in *POM v. Ocean Spray*. Judge Pregerson’s analyses and conclusions on that motion were, once again, sound. The Court therefore concludes that Welch has alleged facts sufficient to state an unclean hands defense and DENIES POM’S Motion to Strike Welch’s unclean hands defense.

Welch did not mention, address or oppose POM’s Motion to Strike Welch’s prayer for punitive damages. Thus, this Court GRANTS POM’s Motion to Strike Welch’s prayer for punitive damages.

No hearing is necessary. Fed. R. Civ. P. 78; L. R. 7-15.

This Order is not intended for publication in the databases of Westlaw or LEXIS.

IT IS SO ORDERED.

Initials of Preparer _____ : _____
SMO