FEDERAL TRADE COMMISSION

I N D E X

IN RE POM WONDERFUL, ET AL.

TRIAL VOLUME 2

PUBLIC RECORD

MAY 25, 2011

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS	VOIR
L. RESNICK	227	289			

EXHIBITS	FOR ID	IN EVID	IN CAMERA	STRICKEN/REJECTED
CX				
(none)				
RX				
(none)				
JX				
(none)				
DX				
(none)				

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of	)	
	)	
POM WONDERFUL LLC and	)	
ROLL GLOBAL LLC,	)	
as successor in interest to	)	
Roll International Corporation,	)	
companies, and	)	Docket No. 9344
STEWART A. RESNICK,	)	
LYNDA RAE RESNICK, and	)	
MATTHEW TUPPER, individually	)	
and as officers of the	)	
companies.	)	
	)	
----------	)	

Wednesday, May 25, 2011
9:31 a.m.
TRIAL VOLUME 2
PUBLIC RECORD

BEFORE THE HONORABLE D. MICHAEL CHAPPELL
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C.

Reported by: Josett F. Whalen, RMR-CRR

APPEARANCES:

ON BEHALF OF THE FEDERAL TRADE COMMISSION:

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P R O C E E D I N G S

- - - - -

JUDGE CHAPPELL: Back on the record Docket 9344.

Are we ready to proceed with questioning?

MS. HIPPSLEY: Yes.

- - - - -

Whereupon --

LYNDA RAE RESNICK

a witness, called for examination, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION (resumed)

BY MS. HIPPSLEY:

Q. Good morning, Mrs. Resnick.

A. Good morning.

Q. Yesterday you stated that Diane Kuyoomjian, I think is the last name, Diane K, was one of the chief marketing officers for POM Wonderful; is that correct?

A. I don't know if that was her actual title or if she was a senior VP or whatever, but she was the most senior member of the group.

Q. Of the marketing group?

A. Yes.

Q. And I think you said she also worked there for a couple of years?

A. I believe so.
Q. And was that time period roughly from 2008 through 2009?
A. I think it was later than that. I think she was there until 2010.
Q. Oh. Okay.
A. At some point.
Q. All right. And was she let go by POM Wonderful?
A. Yes. I believe so.
Q. All right. And did you participate in the decision to terminate her?
A. Well, I think it was a decision that Matt and I came to together.
Q. And what was the reason that she was terminated?
A. She just didn't have I suppose the imagination and drive that the job required.
Q. Now, this is the period that you testified yesterday you were not as involved at POM Wonderful; is that correct?
A. Yes.
Q. And so given the concern and the termination of Ms. K, how is it that you had the confidence in the marketing at POM Wonderful while you were pulling away from the business?

A. Excuse me? Can you restate that, please.

Q. If you were concerned about Ms. K's performance, how is it that you felt comfortable not working as closely with the marketing aspects of the POM Wonderful business at that time?

A. You know, we don't always do what we want to do in life. Life presents challenges to us, and that is what I chose to do or what life dictated I would do. I have a lot of demands on me as a mother and a grandmother and a wife and a daughter, and so forth, and so -- and all the other businesses.

Q. And were you, though, still confident that Mr. Tupper would be able to take care of the marketing aspects of POM Wonderful as you had previously done when you were more closely working in the company?

A. Yes. Of course. And we have a team of people, and I felt comfortable that it would be okay. But because I was pulling away, I needed someone stronger to be a partner with Matt than Diane.

Q. Okay. And who then was hired after Diane K again?

A. I think it was Paul Coletta, who was an interim step until we found someone, because he lived in a different city and he could not commit to a full-time job, so he was there for a while to cover the bases.

Q. And then you hired the permanent head of marketing that's there today; is that right?

A. That's correct.

Q. And in your book you have stated that "Matt Tupper has been my partner at POM since 2003."

Is that a correct statement?

A. Yes.

Q. And I believe you also said that "His sense of honor and faith in the brand have enabled us to move light-years ahead."

Is that also a statement you had in your book?

A. Well, I'm not looking at the book and I haven't memorized the book, but it sounds familiar and it's true.

Q. Okay. Why don't we call up that page just so we can confirm it's in the book.

JUDGE CHAPPELL: Let me ask you a question.

MS. HIPPSLEY: Yes.

JUDGE CHAPPELL: Does it matter if it's in the book or does it matter if it's true? She told you it's true.

So I'm wondering what's the point in verifying it's actually in the book.

MS. HIPPSLEY: Okay.

JUDGE CHAPPELL: No. You go ahead. I'm just

wondering why that's relevant -- excuse me. Can we talk one at a time, please?

MS. HIPPSLEY: I'm sorry.

She said it was true, but I just wanted to have the record clear that indeed she had said it in the book in case there was any ambiguity, but if the question and answer is clear enough, then we wouldn't need to do that.

JUDGE CHAPPELL: Thank you.

BY MS. HIPPSLEY:

Q. Let's go to the bottom of the page of 197 for the Rubies in the Orchard book.

And also in the book you stated that Dr. Liker, together with Mark Dreher, you were thanking them in sharing your enthusiasm for the pomegranate's virtues and has directed the astounding scientific research on pomegranates and human health, and that's correct; right?

A. Yes.

Q. Now, I believe yesterday you mentioned Michael Milken and the Prostate Cancer Foundation; is that right?

A. No. His name is Michael "Milken."

Q. Oh, "Milken." Okay.

And he's associated with an organization called

the Prostate Cancer Foundation; is that right?

A. He's -- yes. He's the founder of that organization.

Q. And are you on the board of directors at that foundation?

A. I am.

Q. And I believe you had started yesterday, but we didn't really get into it, explaining their views on pomegranate juice.

Could you explain what the foundation says about pomegranate juice and prostate cancer.

A. I cannot because I don't have their Web site in front of me. But I know that Michael drinks it every day. He -- but -- this is not a formal statement from the organization, but Dr. Jonathan -- I can't remember his name. He's the head of it, the scientific head. It will come to me in a minute -- and Mr. Milken recommended to people who have prostate cancer to drink and they embrace the whole idea of POM Wonderful, they do.

Q. And I think you said "Mr. Milken recommended to people who have prostate cancer to drink," and if you could just complete the thought there for the record, to drink pomegranate juice; is that correct?

A. Yes.

And he's always sending me e-mails and asking me to send POM supplements to people that he meets that -- because everyone that has prostate cancer that has an opportunity to talk to Mike Milken takes that opportunity because he knows more about it I think than anybody, and he's always asking me to send supplements to people, which I do.

Q. All right. If we could display Plaintiff's Exhibit 1176 at page 6.

And this is a page from the Prostate Cancer Foundation Web site.

And could you blow up just the top portion so we can see that a little more clearly with the title.

A. I'm wearing contact lenses and glasses today. Let's see if that helps.

Q. All right. And so this is from the Prostate Cancer Foundation Web site. It was pulled March 11, 2011, Understanding Prostate Cancer Prevention.

And now if we can go down to the bottom of the page where there's a section Top 10 Considerations for Preventing Prostate Cancer.

And this section, on page 6 of Plaintiff's Exhibit 1176, explains that to understand how to prevent prostate cancer one must first understand the causes and

then starts to list the factors, and I just wanted to start this so you could see the section was titled Top 10 Considerations for Preventing Prostate Cancer.

So now if we could turn to the next page of the Web site, page 7, of Plaintiff's Exhibit 1176.

A. I can't read it.

Q. Okay. And the first -- if you could blow up the second paragraph, "Given the facts above..."

And this states that there's various factors for prostate cancer, and the last sentence of that paragraph states: "We believe the major risk factor is diet -- foods that produce oxidative damage to DNA. What can you do about it to prevent or delay the onset of the disease?"

And then there are listed the ten factors that they recommend under the heading 10 Considerations for Preventing Prostate Cancer.

So if we could blow up maybe half at a time, please.

Can you see that, Mrs. Resnick?

A. I can.

Q. Thank you.

And number one is: Eat fewer calories or exercise more so that you maintain a healthy weight.

Number two: Try to keep the amount of fat you

get from red meat and dairy products to a minimum.

Number three: Watch your calcium intake. It explains some more about supplemental doses.

Number four: Eat more fish -- evidence from several studies suggest that fish can help protect against prostate cancer. It goes on.

Number five: Try to incorporate cooked tomatoes that are cooked with olive oil, which has also been shown to be beneficial, and cruciferous vegetables like broccoli and cauliflower into many of your weekly meals. Soy and green tea are also potential dietary components that may be helpful.

Number six: Avoid smoking. Alcohol in moderation.

Number seven -- thank you -- Seek medical treatment for stress, high blood pressure, high cholesterol, and depression.

Number eight: What about supplements? It goes on to explain that avoid oversupplementation with megavitamins. Too many vitamins, especially folate, may fuel the cancer, and while a multivitamin is not likely to be harmful, if you follow a healthy diet with lots of fruits and vegetables, whole grains, fish, healthy oils, you likely are not even to need a multivitamin.

Number nine: Relax and enjoy life.

Number ten: Finally, eating all the broccoli in the world, though it may make a difference in the long run, does not take away your risk of having prostate cancer right now.

So the list that is on their Web site does not include advice about drinking pomegranate juice; is that correct?

A. Isn't this for prevention of prostate cancer?

Q. Yes.

A. We never said that we prevent prostate cancer.

Q. And so what again is what your understanding is that the Prostate Cancer Foundation states for the use of pomegranate juice?

A. I told you that I have no idea what's on their Web site, but I know that Mike Milken takes it every day and embraces our research, and so does Dr. Jonathan, whatever his name is, whose name I can't remember. And I don't know why it isn't here. I really haven't read the Web site. I was told that there was a whole section on it, but I never checked it out.

Q. Okay. Well, let me show you another exhibit from the Prostate Cancer Foundation, and there is some discussion of pomegranates, so we'll go through that now.

So if you could pull up Complaint Counsel's

Exhibit 1286.

And this is a publication by the Prostate Cancer Foundation. The publication is titled Nutrition, Exercise and Prostate Cancer.

And the first author is Dr. David Heber, and he has had some relationship with POM Wonderful; is that correct?

A. Yes.

Q. And is he a consultant for POM? Is that right?

A. I don't know if that's what you would call him, but he's done some research for us.

Q. Okay. And he's done research on POM juice; is that right?

A. Yes.

Q. And has he done research on the pomegranate extract?

A. I believe so, but I'm not sure.

Q. All right. And he has also provided statements for your marketing materials that we saw yesterday; is that correct?

A. I believe so.

Q. Okay. If we could --

A. What is the date of this, please?

Q. This was ordered on -- in the fall of 2009. There's no copyright on it, but you can pull it off the

Web site today.

A. But it was done in 2009.

Q. Yes, that's correct.

A. All right.

Q. And if we could go to page 3 of the pamphlet, which is CX 1286, and can you highlight the right column, The Color System of Antioxidants.

And on this page begins a -- several pages of discussion on a color system of antioxidants and explains that there's different types of antioxidants that can for the most part be grouped by color. They give the example of antioxidants found in red tomatoes that are identical to those found in red watermelon or pink grapefruit and then states that although the system is by no means perfect, organizing the phytochemicals by color is an easy way to help you differentiate between the different types and learn how to get a variety of phytochemicals and antioxidants into your diet.

And the red group starts at the bottom of this page. And this group includes the -- as we had stated, the tomatoes, et cetera, and discusses that they contain lycopene, which is one of the most well-studied antioxidants in the fight against prostate cancer, and then it goes on.

If we could go to the next page, please, which is Plaintiff's Exhibit 1286 page 4.

And if you could highlight the top half of the left column.

Thank you.

And this paragraph goes on to explain some of the studies that were conducted when prostate cancer was diagnosed at more advanced stages clearly demonstrated that increased blood levels of lycopene and increased intake of lycopene-containing foods were associated with a reduced risk of aggressive prostate cancer.

It goes on to note, though, that in recent years, as the population of prostate cancer patients has shifted to the identification of cancers at earlier stages and as the population of patients has changed, some of these associations can no longer be demonstrated.

And then if we could go down --

JUDGE CHAPPELL: Excuse me. Is this exhibit in evidence?

MS. HIPPSLEY: Yes, it is.

JUDGE CHAPPELL: You've been reading from it for over four minutes. Is there a question here somewhere?

MS. HIPPSLEY: Yes. I just wanted to make sure

that there's a foundation laid for the question.

JUDGE CHAPPELL: Maybe we should have had that before you put up the exhibit, but you go ahead.

MS. HIPPSLEY: With Mrs. Resnick?

JUDGE CHAPPELL: Go ahead.

I haven't heard any connection to this witness for this exhibit and you've been reading from it for four minutes already.

MS. HIPPSLEY: Okay.

BY MS. HIPPSLEY:

Q. And so if we could go to the lower column.

JUDGE CHAPPELL: My point is, we don't need to read --

MS. HIPPSLEY: No. Right.

JUDGE CHAPPELL: Excuse me. One at a time, please. You go ahead. I'll wait.

MS. HIPPSLEY: Okay. I just wanted to make sure that she understood the context of the next questions I was going to ask.

JUDGE CHAPPELL: All right. Just understand my point, if a document is in evidence, it's in evidence. We don't need to read into evidence again what's already there.

MS. HIPPSLEY: Yes, I understand that.

JUDGE CHAPPELL: Go ahead.

BY MS. HIPPSLEY:

Q. And so at the bottom there it states, at the very bottom of this area: "Thus, the benefits to the red group likely are due to more than just lycopene, and simply taking a lycopene supplement will not confer the same benefit as eating whole fruits and vegetables. Again, this is a simple reminder that there are no shortcuts to a healthy diet and regular exercise."

Have you had any discussions with Dr. Heber about the notion of whether or not taking the prostate -- I'm sorry -- the POM Wonderful supplement should be -- information to consumers should also contain information that it shouldn't just be a substitute for whole fruits and vegetables?

A. Lycopene has nothing to do with what the action is in pomegranates. I have no idea what this means in relation to this case or my -- or my product. And I don't remember if I ever talked to Dr. Heber about supplements, but I have been told repeatedly that the bioavailability in the body when you take the supplement and the juice are the same.

Q. And do you view the supplement as a substitute for a diet of whole fruits and vegetables?

A. Not all whole foods and vegetables. But I prefer the supplement myself. I do not drink the juice

every day, but I take the supplement every day, so I believe in it. I haven't had a cold in about five years.

Q. All right. And then if we can look at the top column on the same page.

And here's the context where pomegranates are discussed by the Prostate Cancer Foundation. It notes that they're part of the red/purple group that contains pomegranates, grapes, plums, and associated berries.

And then if we could go to the next page, which is page 5 of Exhibit 1286. And if you could pull up the chart at the bottom.

And here there's a chart with the key points to remember, and it notes that for the red/purple, pomegranates, the antioxidant is anthocyanins.

And the pomegranates -- the whole pomegranates contain anthocyanin; is that correct?

A. I'm not sure.

Q. And then if we could go to the last paragraph on the right column.

And here the advice is: "Incorporating a variety of colorful and colorless phytochemicals in fruits and vegetables can help to maximize intake of key chemical elements..."

And again, Mrs. Resnick, is this -- so the

Prostate Cancer Foundation's advice is to use a variety of antioxidants; isn't that right?

A. It seems to be.

His name is Jonathan Simon, and he actually called me when he saw the results of the last study and told me they were putting something on the Web site. But if his -- you know, people don't get their Web site up -- I mean, this is not the driving force in his life, although it may be one of the driving forces in mine, so all I can tell you is that this was done in 2009, and we have a second study now that's extremely positive, and he was very excited about those results.

Q. And the second study hasn't been published yet; is that correct?

A. No. But we've read it.

Q. All right.

A. And I believe it was with 300 men I think.

Q. I'm sorry?

A. I believe it was with 100 to 300 men in the study. I'm not sure exactly how many.

Q. Okay. If we could now display Plaintiff's Exhibit 1426 page 28.

And this is an ad with the headline "Drink to prostate health," and if we could blow up the body copy, please.

A. When did this run, please?
Q. I'm sorry?
A. When do you think this ad ran?
Q. This is Exhibit B to the complaint counsel's complaint, and I believe it ran in 2008.
A. But you don't know?
Q. Not offhand, no. 2008 or 2009.
Do you recognize this ad?
A. I don't.
Q. And you haven't seen it before?
A. I may have. I just don't remember it.
Q. And so you don't --
A. You don't even know if it ran or where it ran; right?
Q. Well, your lawyers have actually admitted that it did run in answering our complaint.
A. Okay.
Q. But you're not familiar with this ad?
A. I don't remember it.
Q. Okay.
A. I don't dispute it, but I don't remember it.
Q. And so do you recall being involved in the development of the body copy that's contained in the ad, just the text "good medicine can taste great" and the discussion of the UCLA study?

A. Not specifically, no.

Q. And if you were not involved, who would be involved in developing that text?

A. Well, we had bodies of words that were acceptable, and so if this ad indeed ran and maybe long ago I had okayed it, I suppose it would have been the senior members of the marketing department.

Q. And in that time period of 2008-2009 who would be the senior members of the marketing department?

A. I am going to fail on this memory test over and over again because I'm not sure.

Q. Would Matt Tupper have been involved in that time?

A. Of course.

Q. All right. And now we'll turn to Plaintiff's Exhibit 1426 page 38, which is also Exhibit I to the complaint counsel's complaint. And this is a brochure that we looked at yesterday as well.

A. So I do remember it.

Q. Right.

And again, just for the record today, this brochure was used in what context?

A. It was put in the boxes of pills, of supplements, that were sent to consumers, and I believe either this or a version of it was available at GNC. If

you bought the pills, you could take a brochure.

Q. Okay. And turning to page 4 of Exhibit I, which is also marked as page 41 for CX 1426, this is the page that pertains to prostate health and prostate cancer.

Can you see that, Mrs. Resnick, or should we blow it up?

A. No. I think I can read it. I think I can read it.

Q. Okay. And were you involved in the development of this page of the brochure?

A. If this is the first time that the brochure was produced, yes. I was very involved in it.

Q. And under the section Prostate Health there is a discussion of prostate cancer as the most commonly diagnosed cancer.

How does the paragraph about prostate cancer follow from the title of that section, Prostate Health?

A. I don't understand your question.

Q. Does "Prostate Health" as the header for this section then equate to a discussion about prostate cancer?

A. Obviously we thought so.

Q. Okay. And then in the next section it's titled Time Pill and explains that stable levels of PSA are critical for men with prostate cancer. And again it

goes on to explain the UCLA study.

And this is the study that was sponsored by POM Wonderful; right?

A. Oh, yes.

Q. Okay. And the statistics that are provided in this paragraph -- could you blow up that second column, please.

The statistics here are that drinking eight ounces of the pomegranate juice slowed their PSA doubling time by nearly 350 percent and gives another statistic that 83 percent who participated in the study showed a significant decrease in their cancer regrowth.

Do you know where the statistics that were used in the ad came from?

A. I assume they came from the study.

Q. If -- and how would they -- who would be responsible for providing the statistics to the marketing staff?

A. Well, somebody, maybe Mark or whoever was running science at the time, together with Matt, who was a good hit for this sort of thing.

Q. And "Matt" meaning Mr. Tupper; right?

A. I do.

Q. Okay.

A. But he lets me call him "Matt."

Q. Okay. See at the bottom of the page if you can blow up the...

I know this is difficult to read. This is the fine print in the brochure copy. But the footnote to the statistics we were just looking at states that the data is on file, but it does not cite to the publication.

Wouldn't the ordinary course be to cite to the actual UCLA publication if these statistics were contained in it?

A. I have no idea.

Q. And who would ensure that the facts and information in the advertising were accurate at POM Wonderful at this time in '08 and '09?

A. As I've stated before, whoever was running science as well as the legal department would review everything and -- to make sure that it was the appropriate way to present the information.

Q. And the scientist that you're referring to at this time frame would be Mr. Mark Dreher; is that right?

A. I do believe that Mark was there then.

Q. And who took the position after Mr. Dreher?

Mr. Dreher left the company in 2009; is that right?

A. I'm not sure when he left.
Q. But he has left the company?
A. He has.
Q. Okay. And who took over his position after he left?
A. Right.
Q. Is it a Dr. Brad Gillespie?
A. Yes, Brad Gillespie. Yes. Thank you.
Q. And so he would serve that same role today, making sure that the science was accurate in the advertising; is that correct?
A. You know, I don't interact with him at all, so I'm really not sure. I think he's a more senior scientist than Mr. Dreher was, and I'm not exactly sure how that interaction takes place because where Mark was always at our marketing -- or often attended marketing meetings, Brad doesn't come, and that's another reason that I forgot his name besides my aging brain.
Q. Okay. And who do you -- Mark Dreher reports to Matt Tupper; is that right?
A. I believe he did.
Q. And does Dr. Gillespie report to Matt Tupper currently?
A. I assume so, but I don't know.
Q. Okay. We're done with that exhibit, and if we

could look at Plaintiff's Exhibit 348.

This is an advertisement for POMx pills, and this was run April 2010.

And have you seen this ad before?

A. I'm not sure.

Where did it run?

It looks like a freestanding insert.

Q. And that might be -- it's a freestanding insert, and the date of its use was April 2010.

A. Okay.

Q. And have you seen this before?

A. Well, there are certain elements of it that look very familiar, so I'm sure I did.

Q. And what are the elements that are familiar?

A. Well, all the graphics for sure. I don't remember the headline specifically, but the pill equals the juice and the little POMs pouring out of the pill are all things that I worked on and approved.

Q. Okay.

A. And the bottle itself of course was designed by our group and...

Q. Right.

And did you approve the use of the headline "24 Scientific Studies Now in One Easy-to-Swallow Pill"?

A. Even though I don't remember the headline

specifically, I must have.

Q. And if you look at the middle of the page -- why don't we bring that up -- the statement "32 million in medical research. Science. Not fiction."

Were you involved in the decision to use the amount of money in medical research that had been sponsored by POM and its affiliates in advertising?

A. Yes.

Q. And when was that decision made?

A. Well, early on. Because, you know, you've seen it go from like 20 million to 34 million or whatever it is today, so at the time that you first saw it appear.

Q. And what was the purpose of putting the amount of money that the companies had spent in medical research into the ad?

A. It was a shorthand way, which you always look for in advertising, a very direct way of communicating to the consumer that here was a natural food that had gone through rigorous scientific testing and that we cared enough to do this and we wanted to tell people that we had and continue to do scientific research.

Q. And do you know what the various figures, the 25 to 32 million, do you know what aspects of the medical research expenses go into the total?

A. I do not.

Q. And who would be responsible --

(Telephone interruption.)

THE WITNESS: I hope that wasn't me.

BY MS. HIPPSLEY:

Q. Who would be responsible for deciding what aspects of the medical research expenses would go into the total that was placed in the ads?

A. I suppose -- I don't know.

Q. It was not yourself.

A. As I said.

Q. Would Mr. Tupper be responsible for making -- for deciding what the 32 million, for example, would consist of in terms of medical research expenses?

A. It's an accounting issue, and I'm not sure.

Q. If you look at the paragraph, it states that POMx is made from the only pomegranates backed by 32 million in medical research at the world's leading universities.

Does the 32 million then consist of only the expenses for sponsored studies, do you know?

A. I answered that I don't know.

Q. And as you had stated, the number went up from 20-25 million to 34 million.

Were you part of any discussions about the amount that was being used and what the increase in the

number consisted of?

A. Actually, no.

Q. Okay. Can we look at the last column.

And here under the section "Complicated studies. Simplified," again there's a discussion of the UCLA study with a quote "'statistically significant prolongation of PSA doubling times,' according to Dr. Allan Pantuck in Clinical Cancer Research, 2006."

Were you involved in seeking Dr. Pantuck's permission to use quotes in the advertising?

A. No.

Q. And did you have any discussions with any of your staff about whether or not Dr. Pantuck had given permission to use quotes by him?

A. I don't know. I can't remember.

Q. All right. If we could call up Plaintiff's Exhibit 455 and go to page 11, please.

This again is the -- a printout of the consumer database where the company received e-mails from consumers and then provided responses.

And if we could blow up the consumer part of that on the lower entry.

Are you on CX page 11?

Yes. Thank you.

And this entry was dated March 2009, and the

consumer states that they had just purchased a reoccurring monthly supply of POM pills and that the brother had recently been diagnosed with advanced prostate cancer, which puts me at high risk, and then proceeded to ask a few questions.

And then if we could look at POM Wonderful's response, the section of the response that's actually on page 12.

And the company's response on the right column, please.

A. What?

Q. We're getting there.

And the company's response is: "We hope this information helps you to combat the possible risk of prostate cancer, and we wish the best of health to you and your brother."

Did you have any involvement in the type of responses that would be provided to consumers who were writing in, explaining that they had prostate cancer?

A. I can't remember if I did specifically about people that had prostate cancer.

Q. Have you seen this sort of response by the company before, that we hope this information helps you to combat the possible risk of prostate cancer?

A. Actually, I don't remember seeing this. And I

didn't as a matter of course read these things unless they had to do with the advertising and we had an issue.

We did an ad with the bottle dressed as a bride and it said, "Outlive your spouse." And a few women, you know, for instance, had written that they had lost their husbands and it was insensitive, and I pulled the ad immediately because we hadn't really thought about that.

Q. Uh-huh.

A. But I don't -- I don't as a matter of course read these things.

Q. Okay. And again, I believe we discussed that the POM Wonderful consumer affairs department would be housed at POM Wonderful; is that right?

A. Oh, yes.

Q. And it would be under the supervision of Mr. Tupper; is that right?

A. Well, maybe not directly but indirectly.

Q. Okay.

A. We all work for him.

Q. All right. And if we could pull up page 13 of Exhibit 455.

And if we could look at the response column of the company. Down at the bottom of the page.

Okay. Here the response of the company to an e-mail that came in in November 2009 starts on this page, and we'll go to the next page.

And I wanted to direct your attention to the sentence that begins on this page, "We hope that your daily," and then if we could go to the next page, 14, and complete the company response.

So "We hope that the (sic) daily consumption of POM juice helps you to fight the prostate cancer. Please let us know if there is anything more we can do for you."

Again, these sentences that were used by consumer affairs, did you have any concern that it was a message that the POM Wonderful juice would help the consumer in fighting their prostate cancer or treating their prostate cancer?

A. I didn't see it.

Q. And you haven't had any discussions about the language used in these responses, is your statement; is that right?

A. I haven't. But remember, these are junior people that are answering e-mails, they're not scientists or attorneys, so they may sometimes say things that you might have a problem with, but you know, it's not that formal a process with us, and I didn't

know about what they were saying.

And I don't even know what the -- what the person wrote, so it's so out of context.

Q. I believe that yesterday we were discussing, at the close of your testimony, what the reference to prostate health meant in the advertising.

And isn't it correct that by referencing prostate health you mean keeping a man safe from prostate cancer?

A. No.

Q. And again turning to one of the depositions that you have taken, this was the deposition in POM Wonderful versus The Coca-Cola Company, and the deposition was taken on December 9, 2009.

And on page 9 of the deposition, there's a series of questions and answers. And the first question is: "Okay. Now, in your book, and I believe in your advertisement, you claim that the pomegranate has a lot of benefits. It affords a lot of benefits to those who consume it; is that correct?

"ANSWER: It is.

And then you were asked, "Yes, what the benefits are."

And your answer was: "I can tell you that I believe that it is very good for circulation, and I'm

going to leave things out because I'm -- I don't have a list in front of me."

And you read through a list and then stated, "We believe, although we don't know for sure, that prostate health, in other words, keeping you safe from prostate cancer, might be a benefit because of the dramatic results with people that are already sick."

Okay. If we could look at Plaintiff's Exhibit 815.

And this is a copy of the prostate study, and I wanted to direct your attention to the conclusions page of the UCLA study, which is page 8 of the exhibit.

And I believe you testified yesterday that you have not read the published study itself; is that correct?

A. I read the abstract.

Q. Okay. And so I'd like to just run through some of the conclusions that are in the published study.

And if I can draw your attention to the sentence that starts -- it's on the fifth line and states, "These proposed benefits, however, are in assays that are as yet unvalidated, and further research is needed to prove the validity of these tests and to determine improvements in such biomarkers (including PSADT) to serve as surrogates for clinical

benefit."

Now, although you didn't read those conclusions, did you have discussions with anyone at POM Wonderful about the limitations of the study as described here?

A. I suppose so.

Q. And in the context of providing information about the study to consumers in the advertising as we've just seen, did you have discussions about whether or not some of these limitations should be included in the ad copy?

A. It doesn't work like that.

Q. Okay. And how does it work?

A. As I've said so many times, we're told what we can say. It is cleared through legal and science, and that's what we say. I -- I'm not a scientist and I can't understand a lot of the words in this document, so I don't know what they mean, so we're merely told what's appropriate.

Q. And who tells you that again? The scientists and legal; is that correct?

A. Yes.

Q. And by "scientists" you're referring to the scientists that are employed by POM Wonderful?

A. Yes. But where that information comes from I

suppose is the scientists that are working on the project in question.

Q. But you don't know if the scientists at POM Wonderful had any discussions with Dr. Pantuck about what would be appropriate to put in advertising; is that correct?

A. Well, didn't you show me something yesterday, some letter or something from him?

Q. Yes. There was that incident where he was raising concerns.

But do you know if the scientists actually showed him, ad copy to Dr. Pantuck?

A. I have no idea.

Q. And the liaison between the researchers and the marketing staff at POM Wonderful would be, for example, Dr. Dreher; is that right?

A. If he was there at the time, of course, yes.

Q. And today it would be Dr. Gillespie; is that correct?

A. I'm not sure.

Q. And what about Dr. Liker? Would he be a liaison between the marketing staff at POM Wonderful and information from the researchers?

A. Maybe on occasion, but certainly that is not his role.

Q. And is Matt Tupper's role to act as a liaison between the marketing staff of POM Wonderful and information coming from the researchers in studies sponsored by POM?

A. Yeah. Matt seems to understand all this, so he certainly helps us wade through it.

Q. I'm going to turn now to the area of research that's been done for erectile dysfunction, so we'll leave the prostate area for now.

And do you recall that in 2007 POM Wonderful issued a press release on a study sponsored by the company dealing with erectile dysfunction?

A. Specifically not, but I know that a study was done.

Q. Okay. Why don't we bring up a document to refresh your recollection on the time of that, and that would be Plaintiff's Exhibit 128.

Could you blow up the top half of that.

Thank you.

This is a memo or e-mail from Pam Holmgren, sent on June 27, 2007 to all POM Wonderful, copied to yourself and Fiona Posell. The subject is an ED press release and the release date is 6-25-07.

Who is Pam Holmgren, please?

A. Pam worked in the public relations department

under Fiona.

Q. Okay. And so does this refresh your recollection that the press release would have been released in June of 2007?

A. It doesn't, but I don't dispute it.

Q. And if we could turn to page 2 of Plaintiff's Exhibit 128.

And this was the attachment which has the press release, and if we could blow up the headline section of the press release, please.

And the subheading of the press release states, "Research shows eight ounces a day of POM Wonderful 100 percent pomegranate juice may help the management of erectile dysfunction."

Would you have approved the headline used for this press release?

A. Not necessarily.

Q. And if you didn't, who would approve the headlines?

A. Well, Matt.

Q. Okay.

A. I have no problem with it.

Q. All right. Did you look at the press release before it was issued in 2007?

A. I don't remember.

Q. Would any press releases about a new study go out without your seeing the press release before it went public?

A. Probably not if I was available, I would read it. But I would never want to hold up something that -- because I was busy or something.

Q. And isn't it correct that this study did not achieve statistical significance?

A. I think it was one-tenth of one point below.

Q. And did you have any discussions at this time of whether it was an appropriate statement to say the research shows that eight ounces a day of POM Wonderful may help the management of erectile dysfunction given the context that the study did not achieve statistical significance?

A. I believe it was so close that -- and everyone was pretty excited about it, and so -- if you'll forgive me, and so they felt that it was worthwhile to share.

Q. But the specific language used in the headline "the research shows," was there any discussion about the appropriate word choice there given the results of the study, the use of the words "research shows"?

A. I don't remember specifically, but we were very careful about the words that we chose all the time.

Q. Let's go to Exhibit 1426 page 27, and this is Exhibit A to the complaint counsel's complaint.

And this has been described -- I had described it in my opening as a hang tag.

Can you explain what a hang tag means in marketing nomenclature?

A. Well, we -- we don't put anything on the bottle except the ingredients, which are, you know, pretty obvious, a hundred percent pomegranate juice, and so there are times that we want to make announcements to the potential customer, so we'll print something on a hard paper stock, you know, and hang it around the neck of the bottle.

I believe in your opening you said that every bottle had it, but that's not true, because we put them on sporadically because you don't need every bottle to have a hang tag in order for the consumer to see it. Then it gets just too busy on the shelf.

So I don't remember if it's every third or every fourth or every other, but that's how we use them. And I think it varies according to what the promotion is. Sometimes they're recipes, drink recipes or food recipes, and like that.

Q. Okay.

A. We don't always do them, though.

Q. All right. And at this time of this hang tag, the statement "backed by 25 million in medical research," et cetera, "proven to fight for cardiovascular, prostate and erectile health," did you see the copy there that was going to be used on the hang tag before it was actually printed?

A. I don't remember it, but I probably did.

What is the time period?

Q. 2009, early 2010.

A. Okay.

Q. Would that change your statement?

A. No. I just was wondering.

Q. Okay. And here the statement is "proven to fight for cardiovascular, prostate and erectile health," and focusing on erectile health, at this time is the study available that is the one that you had the press release on that was sponsored by POM Wonderful?

A. I assume so.

Q. Are there any other studies that have been conducted on erectile dysfunction and sponsored by the company?

A. I'm not sure.

I believe we're in a larger study now, but I'm not absolutely sure.

Q. Okay. But no results from another study that

you know of.

A. Not yet.

Q. And if we could look at Plaintiff's Exhibit 471 page 46.

This is another advertisement for the POMx dietary supplement pills.

And have you seen this particular ad?

A. I remember the headline.

Q. And did you approve the headline?

A. Yes.

Q. And where was this -- this is a freestanding insert as well; is that right?

A. It may not be. It may have gone in a magazine. I just don't know.

Q. Okay. And if it was used in a magazine, was the -- one of the placements for the advertisement with this headline to be Playboy magazine, do you recall?

A. That would make sense with the headline, but I don't know if it's true or not.

Q. And the headline was to draw the attention of the consumer to the information about the ED study that is being discussed in the ad; is that correct?

A. I wouldn't read too much into it. The only antioxidant supplement rated X, we have an X on our bottle, and I think it was just meant to give you a

chuckle.

Q. Okay. And in this ad copy, though, if you can go to the right-hand column, the subheading was "Is that POMx in your pocket?" and then went on to explain a preliminary study on erectile function, men who consumed POM juice record a 50 percent greater likelihood of improved erections as compared to placebo.

So again, the direction of the ad was to highlight this new ED study; is that correct?

A. I already answered that.

Q. Using the POMx in your pocket?

A. Oh, this particular subhead?

Q. Yes.

A. I guess, or are you just glad to see me.

Q. And looking at the body copy there, "50 percent greater likelihood of improved erections as compared to placebo," again, this is the study where statistical significance was not achieved over placebo; is that correct?

A. I was told the statistical significance was not significant because it was so close.

Q. Okay. Did you have any discussions about the questionnaire that consumers -- that was used as the endpoint in this study and whether or not it was a validated survey?

A. Not at the time.

Q. So when you decided to utilize the study in your advertising, there was not any discussion about the survey that was close to statistical significance and whether or not that survey was a validated endpoint; is that right?

A. That is so confusing. Could you say this all over again. Sorry.

Q. Yes. No. That's fine.

At the time the study came out when you had the press release and some of these advertisements, was there any discussion about whether or not the survey used as the endpoint in the study was validated in the science of studying erectile dysfunction?

A. No. I didn't get involved in that at the time.

Q. Okay. And again, the decision to use the study in advertising would be yours?

A. No.

Q. Oh, okay. Who at --

A. This was a -- my job is to take the information available and make it clever and thought-provoking, but I did not make the decision when a study would be made public or used in advertising.

Q. And who would make that decision?

A. Well, it was a joint decision I suppose with

Stewart and Matt and the scientists and legal and all of that.

Q. Now, if we could turn to Plaintiff's Exhibit 481 page 1.

And just so we have the dates before we go forward, this is an exhibit that was used in a deposition of Jeff Rushton, and it contains a screen shot of the POM Wonderful Health Benefits section, and the screen shot was taken in the April-May time period of 2009.

So if we could turn to the Health Benefits page which is attached, which is page 2 of Exhibit 481.

And this is the screen shot again of the Health Benefits page, and if we could look at the erectile function section there.

And again, the study that's being featured is the study that was sponsored by POM Wonderful; is that correct?

A. Yes. I think so.

Q. Okay. And the emphasis in the bolder type, did you have anything to do with how the typeface would look and the decision to highlight the last couple sentences of that paragraph?

A. I can't remember.

Q. Okay. And who would be involved in developing

the body copy for the health benefits Web site at this time in 2008 and 2009?

A. Well, you know, again, if we were talking about science and not just regular body copy that didn't have any scientific research mentioned, it would be Matt and the scientists and legal, and so forth, as I've told you time and again.

Q. And would you review the --

A. And the agency -- excuse me. And the agency.

Q. And would you review any significant changes that would be made to the POM Wonderful health benefits Web site during this time?

A. Actually I think I was told about it as an overview, but I did not get into the details I don't think. Maybe here and there, but certainly not to read the whole thing. That was a very busy time for me, and I wouldn't have had time to do that.

Q. Okay. Do you recall admitting at one of the depositions that you've taken previously, this one being the POM Wonderful versus Tropicana deposition, that POM was perhaps premature in publicizing the results of the ED study?

A. That's what I thought at the time.

Q. Of the deposition?

A. Uh-huh.

Q. Okay. And the date of that deposition is October 11, 2010.

A. Okay.

Q. Have you changed your view of that today?

A. Yes. I feel like it's okay.

MR. GRAUBERT: Excuse me, Your Honor. Were you planning on taking a break this morning, or whatever is counsel's...

MS. HIPPSLEY: That's fine.

JUDGE CHAPPELL: For planning purposes, we normally go at least an hour and a half. We were taking breaks too frequently yesterday, so everybody needs to plan accordingly. We'll go about an hour and a half and then we'll take break, then we'll go an hour and a half and take lunch, and that way we split the day up and we're not in here more than an hour and a half at a time. If there's some reason to take a break, we can do that.

MR. GRAUBERT: I was just checking with the witness.

How are you doing, Mrs. Resnick?

THE WITNESS: Well, I didn't want to upset the judge, so I didn't ask for a break.

JUDGE CHAPPELL: I appreciate that. I don't want to upset him either.

Based on what I heard yesterday, I assumed that we would be wrapping up this witness in a couple hours?

MS. HIPPSLEY: Oh, yes. Even with the break, we'll --

JUDGE CHAPPELL: And I said "we" meaning everybody because I heard either no questions or one or two possibly on cross.

MR. GRAUBERT: That's correct.

JUDGE CHAPPELL: Can you give me a time estimate now how much time remains?

MS. HIPPSLEY: Maybe an hour.

THE WITNESS: I know I can't make that.

JUDGE CHAPPELL: Let's press on a little longer, and then we'll take a break.

Wait a minute. Let me verify. Did you line up another witness today?

MS. HIPPSLEY: No, Your Honor. Because we never got verification of whether Mrs. Resnick's direct by respondents would take place, so we left the day to make sure she would be able to finish today. And our next witness is, remember, the third-party witness, Ms. Fiona Posell, who is only available to start tomorrow.

JUDGE CHAPPELL: Okay. Go ahead.

BY MS. HIPPSLEY:

Q. So I believe you answered this, but just to make clear, you have not had discussions with the various researchers of the sponsored POM Wonderful research; is that correct, about their findings?

A. That's not correct.

Q. Oh, I'm sorry.

Have you had then discussions with -- directly with the researchers about their findings in the sponsored research?

A. Not detailed discussions but informal discussions because we do a dinner for the scientists every year and they come to my house, so I talk to them there. And David Heber is a wonderful friend in a way. You know, I ask him all sorts of things about diet and exercise and things, and so we may informally have talked about things. But I don't grill the scientists about their research.

Q. And you haven't discussed directly with them the use of the research in your marketing; is that correct?

A. No.

Q. And are you aware that not all of the company's research comes out positive?

A. You mean sometimes -- what do you mean by that?

Q. The research that's been sponsored by POM Wonderful and its affiliates, are you aware that not all of that research has had positive results?

A. In an overall way maybe, but specifically what has and has not, you know, I don't hear about it really unless it's positive.

Q. Would it be important to know if there were studies that were not positive in formulating your marketing strategy?

A. Not if it's something I'm not talking about in marketing or advertising. Why would I need to know.

Q. Let's turn to the book again at page 4.

Okay. Here there's a statement that the research conducted at UCLA, UC Davis, Rutgers, the Technion Institute in Israel and other leading institutions was jaw-dropping.

And again the question would be, using the phrase "jaw-dropping," would it be important to you to know whether at this time any of the studies conducted had not been positive?

A. I'm referring -- I don't think so.

Q. Okay. And if we could go to the bottom of the page 4.

And again there's a statement in the book that the news on the health benefits of the pomegranates

started off great, then proceeded to get better and then astound.

And again, the question would be, the use of the phrase "astound," whether it would be important for you to know whether some of the research had not been positive.

A. Only if it related to things that I was advertising.

Q. And given your marketing experience, you knew that you needed scientific support to make POM juice and POMx product health claims; isn't that right?

A. Say that again, please.

Q. That given your marketing experience, you knew that you needed scientific support for POM juice and POMx product health claims; isn't that right?

A. It isn't.

Q. And why is it not right?

A. Say it one more time, please.

Q. Okay. To make health claims for the POMx and POM juice products, you were aware that you needed scientific support to make health claims in the advertising; isn't that right?

A. I didn't do it for the advertising. I had to do it for my soul. We wouldn't make a statement that we didn't believe.

So it wasn't for a marketing reason; it was for my own conscience.

Q. And if we could look at another statement in the book at page 79.

Let's see. I think it's the next statement, "We have invested millions..."

Thank you.

And there's a statement in the book about investing millions in medical research to understand the efficacy of the Wonderful pomegranates in treating a host of medical issues and goes on -- you explain that animal tests are necessary for the rigorous, peer-reviewed science and that they're a prerequisite for human studies and human studies are considered essential, and you state that you didn't invent the protocol, but science considered it sound and you had to follow it.

So this is the protocol that the company would follow if it was going to make any marketing claims about prostate and heart health; is that correct?

A. At the time it is correct, but we have since learned that it isn't essential. But when I wrote this -- you've taken it out of context -- it was really in -- when I was discussing the PETA issue, and that's why I talked about this there in that section.

Q. And what is the basis of the knowledge that you're drawing on to change your view that it is not essential?

A. I've recently been educated to the fact that -- and it makes sense -- that this is a drug protocol, and drugs are a single -- and I'm not a scientist, so I may not make a lot of sense here, but this is the way I understand it -- that drugs are a single action usually and therefore easier to study in humans, but fresh fruits and vegetables act systemically throughout the body, and maybe it is better to do test tube studies on those than actual human studies, is what I've been told. And it makes sense to me.

Q. All right. In your advertising, though, you would emphasize the medical research that the company has done in the various advertisements we've gone through; isn't that correct?

A. Yes.

Q. And the examples that are given in the advertisements are human medical research; isn't that right?

A. Not necessarily. There's all sorts of research behind it. It can be human. It can be test tube. Because, remember, we went through rigorous test tubes and then in animals and then in humans, so it's the

whole body of the research that we're talking about, not just human studies.

Q. But the examples given in the advertisements for, let's say, the POMx supplement were examples of the human clinical research that the company had conducted, for example, the UCLA study; isn't that correct?

A. I don't know. I'd have to see all the ads. I mean, I've seen some today that had that, but when we talk in generalities, we're talking about the whole body of science.

Q. But you do remember the ads that we looked at over the course of yesterday and today had specific body copy about, for example, the UCLA human clinical study on cancer; isn't that correct?

A. Absolutely. I do remember yesterday and today.

JUDGE CHAPPELL: Okay. Let's break here.

MS. HIPPSLEY: Okay.

JUDGE CHAPPELL: We'll reconvene at 11:10.

We're in recess.

(Recess)

JUDGE CHAPPELL: Back on the record Docket 9344.

Next question.

BY MS. HIPPSLEY:

Q. Mrs. Resnick, could you explain the various POM

juice products that are available from POM Wonderful.

A. Yes. There are blends that are at least 50 percent pomegranate juice and then they may have dark cherry juice, would be one. I don't know what they currently are, but I believe we still make blueberry. And we did make a mango at one time. I don't know if it's still in the line.

So there are some blends, and then of course the lion's share of the business is a hundred percent pomegranate juice.

Plus we have a new product called POM Lite, which is 50 percent pomegranate juice and 50 percent like a tea, dragon fruit tea, herbal sorts of things, and that has just come out. It's not in total distribution across the United States, but it's in some markets.

Q. Okay. And on the POM Lite product, is that the actual name of the product, POM Lite?

A. No. It's called Lite POM, L-I-T-E P-O-M.

Q. And is that a shelf-stable product or is it in the refrigerated section?

A. It is in the refrigerated section. It may be shelf stable. I'm not sure. But we don't sell it in the shelf-stable aisle.

Q. And will the pricing on that be less than the

pricing for the 100 percent pomegranate juice?

A. Yes.

Q. And now if we could turn to page 80 of the Rubies in the Orchard book.

And if we could blow up the second full paragraph there.

MR. GRAUBERT: Excuse me. Just give us one minute. The monitor... (indicating).

(Pause in the proceedings.)

MS. HIPPSLEY: One second, Your Honor. We're having technical difficulties with their screen.

JUDGE CHAPPELL: Okay. We'll take a pause off the record.

(Discussion off the record.)

BY MS. HIPPSLEY:

Q. And on page 80 of Exhibit 1 there's a discussion where you explain that some POM drinkers were looking for a lighter drink that would still deliver the antioxidant power of POM, and you go on to explain how some other products are diluted.

And then if we could pull up the next paragraph.

And this states that it made sense to respond to this demand, but then you go on to state, in the middle of that paragraph, if you dilute the unique

sugars and phytochemicals, nutrients that occur nowhere else in nature, you undermine the antioxidant properties; making a lighter version of POM simply wasn't possible without making the kind of compromises we're unwilling to make.

So in bringing the POM Lite to market, and it's only 50 percent 100 percent pomegranate juice, how can it still deliver the health benefits that have been studied and sponsored by the company for 100 percent pomegranate juice?

A. It can't.

Q. Okay.

A. We developed that product so that it would be a reasonable amount of money so that children could start drinking POM at an early age, and that was the reason. And what I thought then, what I think now, I mean, obviously it's not a static process. You change your mind about things.

Q. And is the Lite POM market that you anticipate a children's market?

A. Well, I think it's a family drink because there are very few juices that are available that are good for you. Most of them are pretty -- you know, they're white grape or apple which, as you said yourself, have very little positive attributes, so we wanted something that

the whole family could enjoy.

Q. Okay. But you still think it's good for you at the 50 percent concentration of POM juice and 50 percent of something else; is that right?

A. It's half as good for you.

Q. Okay.

A. Unless you drink twice as much.

Q. Have any -- has any scientific research been conducted using a POM Lite version of the product for medical research?

A. No. Not to my knowledge. It's a brand-new product.

Q. And pomegranate extract, could you explain what the extract actually is.

A. Probably not.

Q. Okay. Not from a scientific term, but it's the remainders of the POM, pomegranate; is that correct?

A. No. I don't really feel qualified to tell you what POMx is.

Q. Is it from the whole fruit?

A. Oh, of course.

Q. So it's derived from the pomegranate fruit; is that correct?

A. Yes.

Q. And POMx is sold in a pill form, which is the

advertisements we've seen previously; is that right?

A. Yes.

Q. And is it sold in a liquid form?

A. It is, but no one can drink it.

Q. And why is that?

A. It tastes terrible.

Q. And is it still offered for sale in the marketplace?

A. There are some hardcore people that like it.

Q. Okay. And is the POMx extract also incorporated as an ingredient in various other POM products?

A. It's in the tea and it was in the coffee. I'm not sure if it's in anything else. I think it may have been in the bars at one time, but we're trying to work our way out of that.

Q. I see.

So it has been in the -- what would you call them -- health bars or -- I don't know how to describe that product.

A. They're called POM bars.

Q. Okay. And the POMx extract was in the POM bars, but it's being phased out; is that --

A. We're trying.

Q. And is it included in a sports recovery item?

A. I'm not sure.
Q. Does POM sell some sort of sports recovery juice product?
A. I know we sell it. I didn't have much to do with that at all. That was really Matt and Stewart.
Q. And so you don't have any knowledge of whether that has POM extract in it or not.
A. I could guess, but I'd rather not.
Q. That's fine.
And do the products that have POMx as an ingredient also have the POMx health benefits, in your view?
A. Please repeat that.
Q. Do the products that -- let's say the tea -- that have POMx as an ingredient also have the POMx health benefits, in your view?
A. Well, it depends on how much is in there and -- I can't make a blanket statement about that.
Q. Okay. And have you used the claimed benefits of pomegranate to market the tea?
A. I can't remember right now.
JUDGE CHAPPELL: Are you finished with this document on the monitor?
MS. HIPPSLEY: Oh, yes. I'm sorry.
THE WITNESS: Thank you, Your Honor.

BY MS. HIPPSLEY:

Q. And if we look at the POM Wonderful versus Coke, your deposition transcript from December 2009 at page 104, there's a question: "You use the claimed benefits of pomegranate to market that tea; is that correct?

"ANSWER: Yes, because it's made with POMx."

Does that refresh your recollection as to whether you use the benefits of pomegranate to market the tea?

A. I can't remember right now. No, it doesn't.

Q. Okay. But that was the statement you made at the time of your deposition.

A. I have no reason to doubt you.

Q. And do you think that the purchasers of the POM tea are buying it because of the claimed health benefits for POMx?

A. I think to the extent that they're buying it, they're buying it because they love -- you know, you have to remember, people love the taste of POM, some people, and the health benefits are not the only reason that they buy it. And the teas are fabulous because they're really one of the best pure iced teas that are on the market and they have a very refreshing taste and they also have the POMx and they have no caffeine, which

is very positive in a tea if you don't want to consume caffeine.

So I think there's an umbrella halo around POM and -- but whenever anyone tells me that they're trying to get the health benefits, if anyone ever mentions that, out of the tea that you have in the juice, I try to tell them that it's not the same, because the concentration of pomegranate juice isn't the same.

Q. But the tea also has the POM extract; is that right?

A. It does -- it did. I don't know -- yes, I think it still does.

Q. And I just have a few more questions basically to clarify your role with the companies.

You and Mr. Resnick own Roll Global; is that correct?

A. That's what I'm led to believe.

Q. And led to believe by your legal advisers?

A. I assume we own it.

Q. Okay.

A. It's California law I think.

Q. All right. And until this year, Roll Global was known as Roll International Corporation; is that correct?

A. That's right.

Q. And what is your official position today in Roll Global?

A. Well, it's a moving target, so -- as I said, I'm dedicating my life to philanthropy and trying to remove myself from the day-to-day, and so I'm more successful in some businesses than I am in others, and that's what it is.

Q. Do you have an official position with Roll Global, such as a vice chairman or a vice president?

A. I'm a vice chairman I believe.

Q. And is that the position that you held in its predecessor, Roll International?

A. Well, for some years I think.

Q. And do you have an official position with POM Wonderful?

A. I don't believe I do.

Q. And there's been a description in several documents in this matter and previous depositions that describe your role to POM Wonderful as a dotted line.

Can you explain what that means, if you know?

A. Please repeat that.

Q. A terminology that's been used by the lawyers in this case for POM Wonderful have described in briefs and things your role to POM Wonderful as a dotted line.

Can you explain what that means?

A. No.

Q. And it's come up in other contexts.

Do you have any idea what a dotted line represents?

A. Well, I know when you talk about management and you speak about organizations that someone can have a straight line to someone, which means that they answer to them and they usually handle their benefits and their salary reviews and things like that. But a dotted line means that although you don't have the day-to-day responsibility for that particular role, that person, that you do have a dotted line to them in that you work with them in a -- in a position of authority I guess you would say.

Q. Okay. Thank you.

And today, would you still consider yourself the chief marketing person in the Roll group of companies?

A. Well, I'm an owner, so it's different.

At Teleflora, for instance, I have a very strong chief marketing officer who is actually better than I am, and my involvement is minimal there at this point, where I go in once every two weeks for an hour and a half or something.

So, you know, it depends on which business and at which moment in time.

Q. And in terms of the business of POM Wonderful, today would you still consider yourself the chief marketing person in your relationship with POM Wonderful?

A. I suppose I still am.

MS. HIPPSLEY: Uh-huh. Okay.

Your Honor, I have no further questions.

JUDGE CHAPPELL: Thank you.

Cross?

MR. FIELDS: Very briefly, Your Honor.

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CROSS-EXAMINATION

BY MR. FIELDS:

Q. Mrs. Resnick, do you recall, earlier this morning I think it was, that complaint counsel read you at some lengths from the statement of the Prostate Cancer Foundation?

A. Yes.

Q. And do you remember that complaint counsel read you a quite lengthy bit of that statement about tomatoes and broccoli and things like that?

A. I do.

Q. Do you recall you said you thought there was

something in there about pomegranate? Do you recall that?

A. Yes. Because Jonathan Simon had called me and told me he was so excited about the research, they were putting something in the document -- in their Web site.

Q. Okay. But could we have page 13 of Exhibit 1286 put up on the screen, particularly the upper right-hand corner.

I'm going to read you what complaint counsel left out when she was reading at length about the benefits from the statement of the Prostate Cancer Foundation, and I want you to tell me if that's what you had in mind when you said you heard something was in there about pomegranates.

I'm reading from page 13 of Exhibit 1286.

Can you blow that up a little bit.

That's as big as we can go. Okay. I'll read it.

"For example," it says, "pomegranates have ellagitannins, which inhibit inflammation and may have benefits for heart health, cancer prevention, and dementia..."

Now, is that what you meant and what complaint counsel left out when she read from that statement?

A. I never saw it on the Web site, but that's very

positive.

MR. FIELDS: Thank you.

That's all I have, Your Honor.

THE WITNESS: Thank you.

MS. HIPPSLEY: No further questions.

JUDGE CHAPPELL: Thank you. You're excused.

THE WITNESS: I'm sorry?

JUDGE CHAPPELL: Thank you. You're excused.

THE WITNESS: Thank you.

JUDGE CHAPPELL: Anything further today?

MS. HIPPSLEY: No, Your Honor. And I do want to apologize that we don't have another witness. It was a little bit of a rough start with Mr. Perdigao and our third-party witness, but when we're back the week of June 5, we will have witnesses solidly through, and I know that we'll be providing that list to chambers.

JUDGE CHAPPELL: Okay. We're going to plan on -- we're starting at 12:00 tomorrow and we may take a break at some point for me to reconvene an earlier docket. We'll just play that by ear tomorrow, but we will be starting tomorrow at 12:00.

MS. HIPPSLEY: Yes, Your Honor.

JUDGE CHAPPELL: All right. We're in recess.

(Whereupon, the foregoing hearing was adjourned at 11:34 a.m.)

C E R T I F I C A T I O N O F R E P O R T E R

DOCKET/FILE NUMBER: 9344

CASE TITLE: In Re POM Wonderful LLC, et al.

HEARING DATE: May 25, 2011

I HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the notes taken by me at the hearing on the above cause before the FEDERAL TRADE COMMISSION to the best of my knowledge and belief.

DATED: JUNE 1, 2011

JOSETT F. WHALEN, RMR

C E R T I F I C A T I O N O F P R O O F R E A D E R

I HEREBY CERTIFY that I proofread the transcript for accuracy in spelling, hyphenation, punctuation and format.

ELIZABETH M. FARRELL