

Wal-Mart Mislabeled Pomegranate Juice, Class Action Says

By **John Kennedy**

Law360, New York (March 03, 2015, 6:02 PM ET) -- Wal-Mart Stores Inc. is purposefully misleading consumers by labeling as cranberry-pomegranate juice a beverage that's primarily a mixture of water and other juice concentrates, according to a proposed class action filed in Florida federal court.

Lead plaintiff Cheryl Hulse filed the complaint Friday, saying Wal-Mart is violating Florida law by intentionally marketing its "Great Value 100% Juice Cranberry Pomegranate" beverage as something its not in an effort to tap into the "enormous new market" of health-conscious people looking to buy cranberry and pomegranate products.

"With the nutritional and health benefits of pomegranate and cranberry juices becoming widely known, consumer demand for pomegranate and cranberry juices has increased rapidly," the complaint says.

Cranberries and pomegranates are prominently displayed and named on the juice label, while the other ingredients, including white grape, apple and plum juice concentrates, are described in a smaller font, according to the suit.

As a result of this "misleading and unfair marketing tactic," Hulse bought the juice believing it contained the health and nutritional benefits commonly associated with pomegranate and cranberry juices, the complaint says, adding that studies have shown the fruits contribute to a healthy heart.

"This labeling tactic misleads the average reasonable consumer to believe that they are purchasing a product that primarily contains pomegranate and cranberry, when in reality, they are being deceived into paying a price premium for water and cheap juices," the complaint says.

Because of the juice's makeup, Wal-Mart should have advertised it as white grape juice or apple juice or placed images of these fruits alongside the cranberries and pomegranates on the front label, the lawsuit says. It also argues that the information on the back label can't be used to defend deceptive front-label claims.

The complaint cited a **September 2010 decision** in California federal court in which a jury found that while the name of Welch Foods Inc.'s "Welch's 100% Juice White Grape Pomegranate" drink was literally accurate, it was still deceptive, and Welch had intended to deceive consumers.

The plaintiff in that case, Pom Wonderful LLC, said the juice was mostly grape and apple juice, with about 1 ounce of pomegranate juice in a 64-ounce bottle.

If the immediate case is certified as a class action, it would include any Florida residents who bought the juice for personal use in the past four years. The plaintiffs are looking to recover all revenue Wal-Mart received from the sale of the juice during that time, and for the retailer to stop its alleged mislabeling of the product.

Joshua H. Eggnatz of Eggnatz Lopatin & Pascucci LLP, one of Hulse's lawyers, said he couldn't comment on the pending litigation.

Wal-Mart couldn't be immediately reached for comment Tuesday.

Hulse is represented by Joshua H. Eggnatz and Michael J. Pascucci of Eggnatz Lopatin & Pascucci LLP.

Counsel information for Wal-Mart was not immediately available Tuesday.

The case is Hulse v. Wal-Mart Stores Inc., case number 3:15-cv-00233, in the U.S. District Court for the Middle District of Florida.

--Additional reporting by Ryan Davis. Editing by Mark Lebetkin.

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