

to POM Wonderful. Roll provides shared services such as legal, consulting, and human resources services to POM Wonderful. Through an in-house advertising agency known as “Fire Station Agency” or “the agency” (“Fire Station”), Roll works with POM Wonderful employees to create content for, and determine placement of, the print, outdoor, direct mail, and online ads for the POM Wonderful products. Fire Station also monitors the effectiveness of the POM Wonderful ad campaigns.

3. Respondent Stewart A. Resnick is the Chairman of POM Wonderful. He also is the Chairman and President of Roll, and a Director of Roll. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the companies, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of the companies.
4. Respondent Lynda Rae Resnick is a co-Director of Roll with respondent Stewart Resnick. She, along with Stewart Resnick, also has authority over POM Wonderful and Roll in her capacity as a trustee and beneficiary of the 1988 Resnick Trust. Individually or in concert with others, she formulates, directs, or controls the policies, acts, or practices of the companies, including the acts or practices alleged in this complaint. Her principal office or place of business is the same as that of the companies.
5. Respondent Matthew Tupper is the President and Chief Operating Officer of POM Wonderful. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of POM Wonderful, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of the companies.
6. Respondents have manufactured, advertised, labeled, offered for sale, sold, and distributed products to the public, including POM Wonderful 100% Pomegranate Juice (hereinafter “POM Juice”), and POMx Pills and POMx Liquid (hereinafter “POMx”). POM Juice and POMx are “foods” and/or “drugs” within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.
7. POM Wonderful and Roll have operated as a common enterprise while engaging in the deceptive acts and practices alleged below, and individual respondents Stewart A. Resnick and Lynda Rae Resnick have formulated, directed, controlled or had authority to control, or participated in the acts and practices of POM Wonderful and Roll. Because these companies have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below.
8. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

P_____

[image of POM Juice bottle blasting off]

Man by man, gland by gland, The Antioxidant Superpower® is 100% committed to defending healthy prostates. Powered by pure pomegranate juice . . . backed by \$25 million in vigilant medical research* . . . there's no telling just how far it will go to improve prostate health in the future.

* Prostate study details at
http://www.pomwonderful.com/health_benefits.html

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Arterial Plaque.

This pilot research study involved 19 elderly individuals who had atherosclerosis, or hardening of the arteries, where plaque was already built-up to a dangerous level. Ten of the patients drinking just 8 oz. of POM Wonderful 100% Pomegranate Juice a day for one year had **up to a 30% decrease in the thickness of the lining** of their carotid artery, while the control group made up of nine patients that didn't drink POM Wonderful, actually had an increase of 9%. In addition, those who drank the pomegranate juice also had a 21% decrease in their systolic blood pressure.
[footnote omitted]

ACE and Systolic Blood Pressure.

With hypertension, or high blood pressure, the heart works harder. Arteries are under pressure and the chances of a stroke or heart attack are greater. [footnote omitted] ACE (or angiotensin converting enzyme) is an enzyme that the body produces which may lead to high blood pressure resulting in atherosclerosis. [footnote omitted] In a preliminary research study, ten elderly patients with hypertension drank 8 oz. of POM Wonderful 100% Pomegranate Juice a day for just two weeks. After those two weeks, in those patients drinking POM Wonderful **ACE activity was significantly decreased by 36% creas**

G. * * *

[Interviewer:] **Should I take vitamins?**
[Lynda Resnick:] I don't know your family history. How's your father?

[Interviewer:] **He's in good health. Had a bout of prostate cancer, but that's—**

[Lynda Resnick:] You have to be on pomegranate juice. You have a 50 percent chance of getting it. Listen to me. It is the one thing that will keep your PSA normal. You have to drink pomegranate juice. There is nothing else we know of that will keep your PSA in check. Ask any urologist—your father should be on it. Your father should be on it. I'm sorry to do this to you, but I have to tell you. We just did a study at UCLA, on 43 men ... It arrested their PSA. How old are you, 28?

[Interviewer:] **Twenty-six.**
[Lynda Resnick:] Get a base line now. [*Pause, wink*] It's also 40 percent as effective as Viagra. Not that you need it. But—couldn't hoit [sic]!

— Interview with Lynda Resnick, posted on Pom Wonderful Blog page,
http://blog.pomwonderful.com/pom_wonderful/2009/03/striking-out-on-y

A 2005 study published in the American Journal of Cardiology showed improved blood flow to the heart in patients drinking 8oz [sic] daily of POM Wonderful 100% Pomegranate Juice for 3 months.

Researchers studied a total of 45 patients with coronary heart disease who had reduced blood flow to the heart.

Patients drinking POM Wonderful 100% Pomegranate Juice experienced a 17% improvement in blood flow, compared to an 18% worsening in patients drinking a placebo.

Prostate

A preliminary UCLA medical study, published by The American Association for Cancer Research, found hopeful results for prostate health.

The study tested 45 men with recurrent prostate cancer who drank 8 oz of POM Wonderful 100% Pomegranate Juice daily for two years. **Post-prostate surgery PSA average doubling time increased from 15 to 54 months.** PSA is a protein marker for prostate cancer, and a slower PSA doubling time indicates slower disease progression.

Erectile Function

A pilot study release 100

MS. STEWART: But, the medical benefits even outweigh the mythical benefits?

MS. RESNICK: Oh, they do, they do. I mean, it is the magic elixir of our age and of all ages, and we know that it helps circulation, it helps Alzheimer's, it helps all sorts of things in the body--

MS. STEWART: Antioxidants.

MS. RESNICK: Antioxidants. Polyphenol antioxidants off the chart.

MS. STEWART: Right.

MS. RESNICK: And if you know a man that you care about or you are a man, make him drink eight ounces of pomegranate juice a day because what it does for prostate cancer is amazing.

— Lynda Resnick interview (Nov. 20, 2008), available on YouTube at <http://www.youtube.com/watch?v=t2vRPGH14u4> [Exh. E-6]

J. * * *

MR. TUPPER: With pomegranate, the dose that's been shown to be effective is eight ounces a day. . . pomegranate is the one fruit that's actually been tested in human beings by dozens of researchers across the globe. There's actually been a study published recently on prostate cancer. Men suffering from advanced stages of prostate cancer drinking eight ounces a day saw the progression of the prostate cancer actually slow dramatically. In addition, there have been a number of studies published on cardiovascular disease in which sick patients again consuming eight ounces of pomegranate juice every day saw dramatic improvements in things like atherosclerosis, which is plaque in the arteries, the amount of blood flow delivered to the heart.

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science. We've actually funded more than \$25 million of scientific research worldwide since we started the business. And, therefore, every product that we sell is backed by that science. Every product that we sell contains those unique antioxidants. We don't do things for scents and flavors. We do them for the health benefits and for the science.

* * *

— Matthew Tupper interview (June 17, 2008), available on YouTube at <http://www.youtube.com/watch?v=Fy2MXbadUr4> [Exh. E-7]

POMx MARKETING

10. Respondents have disseminated or have caused to be disseminated advertising and promotional materials for POMx, including labeling, websites, print advertising, and newsletters. Examples of those ads are attached as Exhibits E, and I through N. These materials contain the following representations or statements, among others:

A. * * *

The power of POM. Now in one little pill.

All of the antioxidant power of an 8oz [sic] glass of POM Wonderful 100% Pomegranate Juice is now available in the convenience of a single calorie-free pill. **Take one daily.**

* * *

Prostate health.

Prostate cancer is the most commonly diagnosed cancer among men in the United States and the second-leading cause of cancer death in men after lung cancer. [footnote omitted]

Time pill.

Stable levels of prostate-specific antigens (or PSA levels) are critical for men with prostate cancer. Patients with quick PSA doubling times are more likely to die from their cancer. [footnote omitted] According to a UCLA study of 46 men age 65 to 70 with advanced prostate cancer, drinking an 8oz [sic] glass of POM Wonderful 100% Pomegranate Juice every da

83% of those who participated in the study showed a significant decrease in their cancer regrowth rate. [footnote omitted]

* * *

To learn more, visit pompills.com/research.

“Basic studies indicate that POMx and POM Wonderful Pomegranate Juice may have the same effects on prostate health.”

*David Heber, MD, PhD, Professor of Medicine and Director,
UCLA Center for Human Nutrition*

* * *

“POM Wonderful Pomegranate Juice has been proven to promote cardiovascular health, and we believe that POMx may have the same health benefits.”

*Dr. Michael Aviram, Lipid Research Laboratory,
Technion Faculty of Medicine, Haifa, Israel*

Heart health.

In two groundbreaking preliminary studies, patients who drank POM Wonderful 100% Pomegranate Juice experienced impressive cardiovascular results. A pilot study at the Rambam Medical Center in Israel included 19 patients with atherosclerosis (clogged arteries). After a year, arterial plaque decreased 30% for those patients who consumed 8 oz of POM Wonderful 100% Pomegranate Juice daily. [footnote omit]

B. Take it daily. Feel it forever.TM

One POMx Pill = the antioxidant power of an 8oz [sic] glass of POM Wonderful 100% Pomegranate Juice

* * *

Science, Not Fiction

- Made from the only pomegranates backed by \$25 million in medical research and the POM Wonderful brand
- Clinically tested

* * *

- Promotes prostate and heart health

— www.pompills.com, POMx Pills home page (Apr. 29, 2009) [Exh. E-8]; *see also* Exh. E-9 (“POMx Pills” web page, Jan. 27, 2010); Exh. E-8 (“POMx Liquid” web page, Apr. 29, 2009); Exh. E-9 (“POMx Liquid” web page, Jan. 27, 2010)

C. Medical Benefits

Research

The antioxidants in POMx are supported by \$32 million in initial scientific research from leading universities, and so far we’ve uncovered encouraging results. [Learn more . . .](#)

Heart Health

We have researched the effects of pomegranate juice on cardiovascular health for almost 10 years, and findings suggest that pomegranate juice may help counteract factors leading to arterial plaque build-up, as well as inhibit a number of factors associated with heart disease. Initial pre-clinical tests have shown that POMx has equivalent cardiovascular benefits to POM Wonderful Juice, and additional studies are now going on. [Learn more](#)

Prostate Health

A preliminary UCLA medical study on POM Wonderful 100% Pomegranate Juice showed hopeful results for men with prostate cancer who drank an 8oz [sic] glass of pomegranate juice daily. And every POMx capsule provides the antioxidant power

of an 8oz glass [sic] of POM Wonderful 100% Pomegranate Juice.
[Learn more](#)

— www.pompills.com, Health Benefits web page, (Jan. 27, 2010)
[Exh. E-9]; *see also* **Exh. E-8** (“Health Benefits” web page, Apr. 29, 2009)

D. The Heart

Promising News

A preliminary UCLA medical study involving POM Wonderful 100% Pomegranate Juice revealed promising news. Men who had been treated surgically or with radiation for prostate cancer were given 8oz [sic] of POM Wonderful 100% Pomegranate Juice. A majority of the 46 men participating in the study experienced a significantly extended PSA doubling time.

. . . [A] slower PSA doubling time may reflect slower progression of the disease.

Before the study of pomegranate juice, the average PSA doubling time for the participants was 15 months. After drinking 8oz [sic] of juice daily, the average PSA doubling time increased to 54 months. That's a 350% increase. Learn more.

According to Dr. David Heber, Director of UCLA's Center for Human Nutrition, *"The most abundant and most active ingredients in Pomegranate Juice are also found in POMx. Basic studies in our laboratory so far indicate that POMx and Pomegranate Juice have the same effect on prostate health."*

— www.pompills.com, POMx Prostate Health web page (Apr. 29, 2009) [Exh. E-8]; see also Exh. E-9 (POMx "Prostate Health" web page, Jan. 27, 2010)

F. **HEALTHY. WEALTHY. AND WISE.** **(2 OUT OF 3 IN THIS ECONOMY AIN'T BAD.)**

* * *

\$32 million in medical research. A sound investment.

POMx is made from the only pomegranates backed by \$32 million in medical research at the world's leading universities. Not only has this research documented the unique and superior antioxidant power of pomegranates, it has revealed promising results for prostate and cardiovascular health.

Hope for the future. Yours.

Our POMx pills are made from the same pomegranates we use to make our POM Wonderful 100% Pomegranate Juice, on which each of the following medical studies was conducted.

An initial UCLA study on our juice found hopeful results for prostate health, reporting "statistically significant prolongation of PSA doubling

times,” according to Dr. Allen J. Pantuck in *Clinical Cancer Research*, ‘06 [footnotes omitted].

Two additional preliminary studies on our juice showed promising results for heart health. “Stress-induced ischemia (restricted blood flow to the heart) decreased in the pomegranate group,” Dr. Dean Ornish reported in the *American Journal of Cardiology*, ‘05 [footnotes omitted].

“Pomegranate juice consumption resulted in significant reduction in IMT (thickness of arterial plaque) by up to 30% after one year,” said Dr. Michael Aviram in *Clinical Nutrition*, ‘04 [footnote omitted].

NEW RESEARCH OFFERS FURTHER PROOF OF THE HEART-
HEALTHY BENEFITS OF POM WONDERFUL JUI

- A. Drinking eight ounces of POM Juice, or taking one POMx Pill or one teaspoon of POMx Liquid, daily, prevents or reduces the risk of heart disease, including by (1) decreasing arterial plaque, (2) lowering blood pressure, and/or (3) improving blood flow to the heart; and
 - B. Drinking eight ounces of POM Juice, or taking one POMx Pill or one teaspoon of POMx Liquid, daily, treats heart disease, including by (1) decreasing arterial plaque, (2) lowering blood pressure, and/or (3) improving blood flow to the heart.
13. In truth and in fact, clinical studies, research, and/or trials do not prove that:
- A. Drinking eight ounces of POM Juice, or taking one POMx Pill or one teaspoon of POMx Liquid, daily, prevents or reduces the risk of heart disease, including by (1) decreasing arterial plaque, (2) lowering blood pressure, and/or (3) improving blood flow to the heart; and
 - B. Drinking eight ounces of POM Juice, or taking one POMx Pill or one teaspoon of POMx Liquid, daily, D(nts orig)Tj56.5200 0.0000 TD(es the risk of he)Tj75.8400 0.0000 TD(a

- B. Drinking eight ounces of POM Juice, or taking one POMx Pill or one teaspoon of POMx Liquid, daily, treats prostate cancer, including by prolonging PSADT.

Among other things, at the time the claims were made, the evidence relied on by respondents consisted of results from an unblinded, uncontrolled study; and the study report stated that it is “controversial whether modulation of PSA levels represents an equally valid clinical end point,” and that “further research is needed to . . . determine whether improvements in such biomarkers (including PSADT) are likely to serve as surrogates for clinical benefit.”

- 16. Through the means described in Paragraphs 9 and 10, respondents have represented, expressly or

- C. Drinking eight ounces of POM Juice, or taking one POMx Pill or one teaspoon of POMx Liquid, daily, prevents or reduces the risk of prostate cancer, including by prolonging PSADT;
 - D. Drinking eight ounces of POM Juice, or taking one POMx Pill or one teaspoon of POMx Liquid, daily, treats prostate cancer, including by prolonging PSADT;
 - E. Drinking eight ounces of POM Juice daily prevents or reduces the risk of erectile dysfunction; and
 - F. Drinking eight ounces of POM Juice daily treats erectile dysfunction.
20. Through the means described in Paragraphs 9 and 10, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 19, at the time the representations were made.
21. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 19, at the time the representations were made. Therefore, the representation set forth in Paragraph 20 was, and is, false or misleading.
22. Respondents' practices, as alleged in this complaint, constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.
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You are notified that the opportunity is afforded you to file with the Federal Trade Commission an answer to this complaint on or before the 14th day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings of fact and conclusions of law under § 3.46 of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings.

Failure to answer within the time above provided shall be deemed to constitute a waiver of your right to appear and contest the allegations of the complaint and to authorize the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding.

The Administrative Law Judge will schedule an initial prehearing scheduling conference to be held not later than 10 days after the answer is filed by the last answering respondent in the complaint. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532-H, Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the prehearing scheduling conference, but in any event no later than five days after the answer is filed by the last answering respondent. Rule 3.31(b) obligates counsel for each party, within five days of receiving TD(t)100sing disclosures without awaiting a formal discovery request.

The following is the form of order which the Commission has reason to believe should issue if the facts are found to be as alleged in the complaint. If, however, the Commission should conclude from record facts developed in any adjudicative proceedings in this matter that the proposed order provisions might be inadequate to fully protect the consuming public, the Commission may order such other relief as it finds necessary or appropriate.

Moreover, the Commission has reason to believe that, if the facts are found as alleged in the complaint, it may be necessary and appropriate for the Commission to seek relief to redress injury to consumers, or other persons, partnerships or corporations, in the form of restitution for past, present, and future consumers and such other types of relief as are set forth in Section 19(b) of the Federal Trade Commission Act. The Commission will determine whether to apply to a court for such relief

on the basis of the adjudicative proceedings in this matter and such other factors as are relevant to consider the necessity and appropriateness of such action.

ORDER

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. Unless otherwise specified, “individual respondents” shall mean Stewart A. Resnick, Lynda Rae Resnick, and Matthew Tupper, individually and as officers of Pom Wonderful LLC (“POM Wonderful”) and Roll International Corporation (“Roll”).
2. Unless otherwise specified, “respondents” shall mean POM Wonderful and Roll, their successors and assigns; the individual respondents; ~~ay~~ nts; ~~ay~~nts

scientific evidence, to substantiate that the representation is true. For purposes of this Part, competent and reliable scientific evidence means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons, that are generally accepted in the profession to yield accurate and reliable results.

IV.

IT IS FURTHER ORDERED that:

- A. Nothing in Parts II or III of the Order shall prohibit respondents from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990; and
- B. Nothing in Parts II or III of the Order shall prohibit respondents from making any representation for any drug that is permitted in the labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

V.

IT IS FURTHER ORDERED that POM Wonderful, Roll, and their successors and assigns, and individual respondents shall, for five (5) years after the last date of dissemination of any representation covered by this Order, maintain and upon request make available to the Commission for inspection and copying:

- A. All advertisements, labeling, packaging, and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation;
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations; and
- D. All acknowledgments of receipt of this Order, obtained pursuant to Part VI.

VI.

IT IS FURTHER ORDERED that POM Wonderful, Roll, and their successors and assigns, and individual respondents shall deliver a copy of this Order to all of their current and future principals, officers, directors, and managers

Order, and shall secure from each such pe

IX.

IT IS FURTHER ORDERED that POM Wonderful, Roll, and their successors and assigns, and individual respondents within sixty (60) days after the effective date of this Order, shall each file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of their compliance with this Order.