

ORIGINAL

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**



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

JOINT STIPULATIONS

Complaint Counsel and Respondents POM Wonderful LLC, Roll Global LLC, Stewart Resnick, Lynda Resnick, and Matthew Tupper (collectively, “Respondents”) have agreed to stipulate to the following, and respectfully request that the Court admit these stipulations into the record as “JX0003”:

A. GLOSSARY OF MATERIAL TERMS

1. **BART (Brachial Artery Reactivity Testing):** A measurement of how much the brachial artery dilates (enlarges) after a blood pressure cuff is inflated, and then released. Also called flow mediated dilation (“FMD”) testing.
2. **Brachial artery:** The major blood vessel of the arm.
3. **Carotid artery:** The arteries located on each side of the neck that provide the main blood supply to the brain.
4. **CAS (carotid artery stenosis):** A narrowing of constriction of the inner surface (lumen) of the carotid artery, usually caused by atherosclerosis.
5. **Diastolic blood pressure:** The bottom number of a blood pressure reading, which measures blood pressure when the heart is at rest and between beats
6. **DSMB:** Data Safety Monitoring Board.

7. **ED:** Erectile dysfunction.
8. **FMD (Flow Mediated Dilation):** Amount by which the brachial artery dilates (gets larger) after the blood pressure cuff is deflated.
9. **IIEF:** International Index of Erectile Function.
10. **IND:** Investigational New Drug application.
11. **IRB:** Institutional Review Board.
12. **LRR:** Lynda Rae Resnick.
13. **NDI:** New Dietary Ingredient.
14. **Prostate:** A gland of the male reproductive system that makes and stores seminal fluid, which nourishes sperm.
15. **SAR:** Stewart A. Resnick.

To the extent that the parties are able to agree on common definitions of additional material terms, each party will submit the glossary of additional material terms with their findings of fact.

B. STIPULATIONS OF FACT AND LAW

STIPULATIONS OF FACT

1. Roll International was reorganized at the end of 2010; as a result, Roll Global LLC (“Roll”) is the successor in interest to Roll International. (S. Resnick, Tr. 1629; CX1354 at 0099).
2. The Resnicks own Roll Global LLC and its affiliated companies, including POM. (S. Resnick, Tr. 1629; L. Resnick, Tr. 286).
3. Roll services affiliated companies including Teleflora, Fiji Water, POM, Paramount Farms, Paramount Citrus, Justin Vineyards and Winery, and Suterra. (S. Resnick, Tr. 1630; PX0364_0001, Resp'ts Answer ¶ 2; Leow, Tr. 493; Perdigao, Tr. 593-94).
4. POM was formed in May 2001. (CX1418).
5. Respondent Matthew Tupper joined Roll in May 2001 as vice president of strategy. (Tupper, Tr. 887).
6. Mr. Tupper is responsible for managing the day-to-day affairs of POM, which employs roughly 350 people worldwide. (Tupper, Tr. 888, 2974).

7. Mr. Tupper is leaving POM (and Roll) at the end of 2011. (Tupper, Tr. 2973).
8. POM manufactures, advertises, and sells products containing pomegranate including POM Wonderful 100% Pure Pomegranate Juice (“POM Juice”), POMx dietary supplement pills and liquid, various POM Juice blends, Lite POM Juice, POMx bars, POMx iced tea and iced coffee, and a POMx sports recovery beverage. (L. Resnick, Tr. 283-284; CX1359 (L. Resnick, FTC Dep. at 0191); CX1360 (S. Resnick, FTC Dep. at 0239-240); CX1368 (L. Resnick, Welch Dep. at 59-60)).
9. To make it ready for sale, the concentrate is reconstituted to make 100 percent pomegranate juice, pasteurized, and bottled for sale. (CX1353 (Tupper, FTC Dep. 0089-90)).
10. POM’s advertising campaigns have included “Superhero,” “Dress[ed] Bottle,” “Trust in POM,” and “History.” (Leow, Tr. 454-57).
11. POM’s websites include pomwonderful.com, pomegranatetruth.com, and pompills.com. (Rushton, Tr. 1354-55; Leow, Tr. 433).
12. The Pomegranate Truth website is a “microsite.” (Rushton, Tr. 1375). A microsite is a small website that specifically targets a single topic and has a small number of pages, in contrast to a major website which could have thousands of pages. (Rushton, Tr. 1374-75). Microsites may appear in the results generated by an Internet search engine when a consumer runs a search. (Rushton, Tr. 1375).
13. The pompills.com website was accessible through the POM Wonderful website as well as by typing in the URL <http://www.pompills.com>. (CX0473 (Compl. Ex. E-4 at 02:10); (CX0473 (Compl. Ex. E-8 at 00:01)).
14. Consumers can purchase POMx Pills and POMx Liquid via the company website or through a telephone call center. POMx Pills also are available through a few U.S. retail outlets that sell dietary supplement products. (CX1353 (Tupper, FTC Dep. 0105-106)).
15. Dr. Aviram has conducted several studies for Respondents, including: (1) Aviram M. and Dornfeld L., *Pomegranate juice consumption inhibits serum angiotensin converting enzyme activity and reduces systolic blood pressure*, 158 *Atherosclerosis* 195 (2001) (“Aviram ACE/BP Study”) (CX542); and (2) Aviram M, et al., *Pomegranate juice consumption for 3 years by patients with carotid artery stenosis reduces common carotid intima-media thickness, blood pressure and LDL oxidation*, 23 *Clin. Nutr.* 423 (2004) (“Aviram CAS/CIMT Study”). (CX611).
16. Dr. Ornish conducted two studies for Respondents: Sumner M., et al., *Effects of Pomegranate Juice Consumption on Myocardial Perfusion in Patients with Coronary Heart Disease*, 96 *Am. J. Cardiology* 810 (2005) (CX1198) (“Ornish MP Study”) and the Ornish IMT study (unpublished, 2005) (CX754).

17. Dr. Michael Davidson conducted two studies for Respondents. *See Davidson MH., et al., Effects of Consumption of Pomegranate Juice on Carotid Intima-Media Thickness in Men and Women at Moderate Risk for Coronary Heart Disease*, 104 Am. J. Cardiology 936 (2009) (“Davidson IMT Study”) (CX1065) and Davidson MH, *The Effects of Pomegranate Juice on Flow-Mediated Vasodilation*, (unpublished, 2004) (“FMD Report”) (CX684).
18. Dr. Davidson is the Medical Director of Radiant Research, Chicago. (CX1134_001). He has been involved, in some manner, in over 700 clinical studies over the past 25 years. (CX1336 (Davidson, Dep. at 221)).

STIPULATIONS OF LAW

1. Plaintiff FTC is an independent agency of the United States Government created by statute. 15 U.S.C. 41.
2. The FTC enforces Sections 5(a) and 12 of the FTC Act, which prohibit, respectively, unfair or deceptive acts or practices, and false advertisements for food, drugs, devices, services, or cosmetics in or affecting commerce. 15 U.S.C. 45(a) and 52.
3. The FTC is authorized to initiate a formal adjudicative proceeding to enjoin violations of the FTC Act. 15 U.S.C. 45(b); 16 CFR Part 3.

C. ADMISSIBILITY OF EXHIBIT USED

The parties agree to amend JX0002, Attachment A (joint stipulations of exhibits to be admitted without objection) by adding RX5007.

Respectfully submitted,

/s/ Mary L. Johnson

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STATEMENT REGARDING MEET AND CONFER

On November 14, 2011, at approximately 3:30 pm (Eastern), Complaint Counsel Mary Johnson and Elizabeth Nach and Counsel for Respondents John Graubert and Skye Perryman agreed to file the *Joint Stipulations* in this matter.

Respectfully submitted,

/s/ Mary L. Johnson

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LYNDA RAE RESNICK, and)	
MATTHEW TUPPER, individually and)	
as officers of the companies.)	
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[Proposed] ORDER

Upon consideration of the agreement of the parties, and it otherwise appearing proper to do so, it is hereby ORDERED that the parties joint stipulations filed November 14, 2011 are admitted into evidence.

ORDERED:

D. Michael Chappell

Dated:

Chief Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that on November 14, 2011, I caused the filing and serving of the *Joint Stipulations* upon the following as set forth below:

One electronic copy via the FTC E-Filing System to:

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., N.W., Room H-159
Washington, DC 20580

One paper copy via hand delivery and one electronic copy via email to:

The Honorable D. Michael Chappell
Administrative Law Judge
600 Pennsylvania Ave., N.W., Room H-110
Washington, DC 20580
Email: oalj@ftc.gov

One electronic copy via email to:

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Attorney for Respondents Lynda and Stewart Resnick

Date: November 14, 2011

/s/ Mary L. Johnson
Mary L. Johnson
Complaint Counsel