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# THE SUPREME COURT GIVES JUICE TO LANHAM ACT CLAIMS

The Supreme Court's unanimous opinion in *POM Wonderful LLC v. Coca-Cola Co.* (Dkt. No. 12-761) (June 12, 2014) highlights the key role of Lanham Act false advertising claims in protecting consumers from misleading advertising and labeling.

Reasoning that competitors often are in a better position than regulators to identify false advertising and other unfair competition, the Court held that the Lanham Act and the Federal Food, Drug, and Cosmetic Act (FDCA) exist in parallel, and that the FDCA does not preclude false advertising claims attacking product labels. Coming on the heels of the Court's March 25, 2014 decision in *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. (2014) – which confirms that Lanham Act plaintiffs need not be in direct competition with their defendants – we predict (i) a further increase in false advertising cases brought under the Lanham Act, and (ii) that defendants facing Lanham Act false advertising cases will find increasing resistance to preemption, preclusion and primary jurisdiction arguments. Food and beverage companies in particular will need to revisit their longstanding belief that a label that complied with a detailed FDA food labeling regulation was essentially immune from a challenge based on an allegation that the label was "misleading."

## *POM Wonderful LLC v. Coca-Cola Co.*

In the underlying district court action, POM alleged that Coca Cola violated Section 43(a) of the Lanham Act (15 U.S.C. §1025(a)) by making false advertising and labeling claims for its Minute Maid® "pomegranate blueberry juice." In particular, POM asserted that the juice's name and advertising misled consumers because the juice had only small amounts of the named components (.03% pomegranate juice and .02% blueberry juice). Coca-Cola argued that the labeling complied with the FDCA and a detailed FDA regulation on juice labeling, which precluded the Lanham Act action. The district court held that the Lanham Act action was barred.

In another unanimous decision regarding a food labeling/advertising law suit, Justice Kennedy's opinion reversed the Ninth Circuit's holding that POM's Lanham Act claims are precluded by FDA regulations promulgated under the FDCA. Reviewing the language and intent of each, the Court concluded that "[t]he Lanham Act and the FDCA complement each other in major respects, for each has its own scope and purpose. Although both statutes touch on food and beverage labeling, the Lanham Act protects commercial interests against unfair competition, while the FDCA protects public health and safety." (Slip Op. at 11). The Court also noted that Congress did not intend compliance with FDA regulations to insulate companies from challenges to the truth and accuracy of their advertising and labeling.

## Significance of Ruling

This case was closely watched by food and beverage companies who have faced increasing actions from consumers and competitors alike that challenge their advertising and labeling claims. The Supreme Court's decision makes clear that there will be no letup in actions by competitors. For many decades, both in-house counsel and outside counsel have confidently advised food and beverage companies that compliance with detailed FDA food labeling regulations (as opposed to those situations in which there are only broad statutory mandates under the FDCA but not detailed regulations) would effectively immunize those claims from challenges under statutes like the Lanham Act. Indeed, the position that the Government expressed in its brief in the case was essentially that – where FDA has spoken in detail about labeling requirements, the Lanham Act should give way and where it hasn't Lanham Act cases were entirely appropriate.

The Supreme Court was not persuaded by the Government's argument anymore than it was by the arguments made by Coca Cola. Rather, the Court held that the two statutes serve complementary goals of protecting consumer welfare. The Court seemed very certain of the proposition that while enforcement of the FDCA and the detailed compliance with FDA regulations is largely the province of the FDA, the FDA does not have the same perspective or expertise in assessing market dynamics that day-to-day competitors possess. Although there is some truth to that observation, it is by no means as clearcut as the Court's opinion makes it seem. FDA food labeling (and other) regulations have long involved consideration of competitive issues as an integral part of determining where to draw lines on permitted claims. Thus, while it is true that competitors who manufacture or distribute products have detailed knowledge regarding how consumers rely upon certain sales and marketing strategies, and how consumers react to certain claims, such insights are not the exclusive province of competitors. Perhaps the Court was persuaded to adopt the ruling it did by recognition that even when FDA has issued detailed regulations governing a food labeling issue, it lacks resources to consistently and meaningfully enforce those requirements. Thus, a competitor may be far better equipped to identify and challenge false advertising and other unfair competition practices because it has the resources (and incentive) to do so.Lanham Act suits draw on this market expertise by empowering private parties to sue competitors to protect their interests – and consumer interests – in truthful advertising. As the Supreme Court noted, "by 'serv[ing] a distinct compensatory function that may motivate injured persons to come forward,' Lanham Act suits, to the extent they touch on the same subject matter as the FDCA, 'provide incentives' for manufacturers to behave well." Slip Op. at 12 (citation omitted). In the coming weeks, food and beverage companies may consider reviewing their product, packaging and advertising portfolios to address any potential vulnerabilities in light of this ruling.

For more information about the Supreme Court's *POM* decision or other information on the Lanham Act and False Advertising issues, please contact one of the following Squire Patton Boggs partners:


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