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food industry lawflash

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Food Companies Should Expect More False Advertising Claims

The Supreme Court holds that competitors may bring Lanham Act claims challenging food and beverage labels that are regulated by the FDA.

On June 12, in *POM Wonderful LLC v. Coca-Cola Co.*,[1] the U.S. Supreme Court held in an 8-0 decision that regulations promulgated pursuant to the Federal Food, Drug, and Cosmetic Act (FDCA) regarding food and beverage labeling do not preclude Lanham Act false advertising claims arising from a product's labeling.

POM Wonderful, which sells a pomegranate-blueberry juice blend, filed a Lanham Act claim against Coca-Cola, alleging that Coca-Cola's name, label, marketing, and advertising for one of its juice blends misled consumers into believing the product consisted predominantly of pomegranate and blueberry juice when, in fact, it consisted of 0.3% pomegranate juice and 0.2% blueberry juice. The Coca-Cola label displayed the words "pomegranate blueberry" in all capital letters on two separate lines. Below those words, Coca-Cola placed the phrase "flavored blend of 5 juices" in much smaller type.

The Food and Drug Administration (FDA) has promulgated detailed regulations for the labeling of juice blends and food flavoring, including the use of images of fruits and vegetables in vignettes, pursuant to the FDCA. In light of the FDA regulations in this area, both the district court and the U.S. Court of Appeals for the Ninth Circuit held that, in the realm of labeling for food and beverages, a Lanham Act claim like POM's was precluded by the FDCA, which forbids misbranding of food, including by means of false or misleading labeling. The Court of Appeals explained, "for a court to act when the FDA has not—despite regulating extensively in this area—would risk undercutting the FDA's expert judgments and authority."[2]

The Supreme Court reversed, holding that nothing in the text, history, or structure of the Lanham Act or the FDCA demonstrated a congressional intent to forbid such claims. In fact, the Supreme Court concluded that the Lanham Act and the FDCA complement each other in the federal regulation of misleading food and beverage labels. The Court explained that "[a]lthough 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."[3]

The Court rejected the argument that the FDCA precluded Lanham Act claims based on the labeling of food and beverages because such a holding would lead to a result that Congress likely did not intend. In particular, because the FDA does not preapprove food and beverage labels (unlike drug labels) and the FDA does not necessarily pursue enforcement measures against all objectionable labels, "if Lanham Act claims were precluded, then commercial interests—and indirectly the public at large—could be left with less effective protection in the food and beverage labeling realm than in many other, less regulated industries."[4] The Supreme Court concluded that it was unlikely that Congress intended the FDCA's protection of health and safety to result in less policing of misleading food and beverage labels than in competitive markets for other products.

1. No. 12-761 (U.S. June 12, 2014), *available at* http://www.supremecourt.gov/opinions/13pdf/12-761_6k47.pdf.
2. *Pom Wonderful LLC v. Coca-Cola Co.*, 679 F.3d 1170, 1177 (9th Cir. 2012).
3. *Pom Wonderful*, No. 12-761, slip op. at 11.
4. *Id.* at 12.

The *POM Wonderful* decision is important for food and beverage companies in at least two respects.

First, it is now clear that food and beverage companies are not insulated from false advertising claims by competitors. A result of the *POM Wonderful* decision and the Supreme Court's decision in *Lexmark International, Inc. v. Static Control Components, Inc*., broadening the scope of plaintiffs who have standing to bring false advertising claims under the Lanham Act, food and beverage companies are likely to face increased litigation in this area in the future. Therefore, food and beverage companies should take appropriate steps to confirm not only that their labels comply with the relevant FDA regulations and the FDCA's statutory prohibition against false or misleading labeling, but also that the labels are not susceptible to claims of false or misleading labeling or advertising in violation of the Lanham Act. For example, these companies should carefully analyze their labels to determine whether a competitor could argue that they make false or misleading claims by implication based on the relevant context, including the images, font sizing, and placement of claims. In certain instances, additional steps, such as consumer surveys, may be appropriate when developing labels for food and beverage products.

Second, by ruling that "the Lanham Act protects commercial interests against unfair competition, while the FDCA protects public health and safety," the Supreme Court appears to have undermined the FDCA's misbranding provisions that prohibit food labeling from being "false or misleading in any particular" in arguably any instance where the false or misleading claims are not related to health or safety.

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