



Intellectual Property ADVISORY ■

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Compliance with Governmental Labeling Regulations Does Not Bar False Advertising Claims Under the Lanham Act

Overview

On June 10, 2014, the U.S. Supreme Court unanimously held that claims under the Lanham Act for unfair competition and false advertising that relate to the labeling of food and beverages are not precluded by the compliance of the products with the Federal Food, Drug, and Cosmetic Act (FDCA). *POM Wonderful, LLC v. The Coca-Cola Company*, No. 12-761, slip op. (U.S. June 10, 2014) (“*POM Wonderful*”). Reversing a Ninth Circuit decision, the Supreme Court’s ruling resolves the question of whether a competitor may bring a Lanham Act claim for unfair competition or false advertising relating to an allegedly misleading food or beverage label when those labels comply with FDA regulations.

Background

The *POM Wonderful* case concerns the product labeling of Coca-Cola’s “Minute Maid Pomegranate Blueberry Blend of 5 Juices” beverage product. In 2008, POM Wonderful sued Coca-Cola for false advertising under Section 43 of the Lanham Act, which provides a right of action against a competitor who “misrepresents the nature, characteristics, qualities, or geographic origin of his . . . goods.” POM Wonderful alleged that the Minute Maid product’s name, label and advertisements misled consumers to believe the drink is comprised predominately of pomegranate and blueberry juices, while in fact, the beverage contained 0.3 percent pomegranate juice, 0.2 percent blueberry juice, and 0.1 percent raspberry juice. The remaining 99.4 percent consisted of apple and grape juices. *Id.*

The Central District of California dismissed POM Wonderful’s Lanham Act claim and granted summary judgment to Coca-Cola, holding that labeling regulations promulgated by the FDA authorized the product’s name and therefore precluded a Lanham Act claim. *POM Wonderful LLC v. The Coca-Cola Co.*, 727 F. Supp. 2d 849 (C.D. Cal. 2010). The Ninth Circuit affirmed the district court’s grant of summary judgment to Coca-Cola. *POM Wonderful LLC v. The Coca-Cola Co.*, 679 F.3d 1170 (9th Cir. 2012). In its decision, the Ninth Circuit noted that, although the Lanham Act “broadly prohibits false advertising,” the FDCA “comprehensively regulates food and beverage labeling” and that the FDA could act if it believed Coca Cola’s labels failed to comply with its regulations. *Id.* at 1175-78.

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U.S. Supreme Court Decision

On June 10, 2014, a unanimous U.S. Supreme Court decision reversed the Ninth Circuit. *POM Wonderful, LLC v. The Coca-Cola Company*, No. 12-761, slip op. (U.S. June 10, 2014). Justice Anthony Kennedy, writing for the Court, held that the FDCA did not preclude an unfair competition claim under the Lanham Act, even though the juice label was covered under the FDCA regulations. Drawing upon the text of the statutes and the legislative history, the Court held that “nothing in the text, history, or structure of the FDCA or the Lanham Act shows the congressional purpose or designs to forbid these suits...” Quite the contrary, the FDCA and the Lanham Act complement each other in the federal regulation of misleading food and beverage labels. Competitors, in their own interest, may bring Lanham Act claims like POM’s that challenge food and beverage labels that are regulated by the FDCA.

The Court noted that competitors “have detailed knowledge regarding how consumers rely upon certain sales and marketing strategies,” and “[t]heir awareness of unfair competition practices may be far more immediate and accurate than that of agency rulemakers and regulators.” Accordingly, the Court concluded that consumers “could be left with less effective protection in the food and beverage labeling realm than in many other, less regulated industries” if Lanham Act claims were to be precluded by the FDCA. The FDA “does not have the same perspective or expertise in assessing market dynamics that day-to-day competitors possess,” the ruling states. Rather, “Lanham Act suits draw upon this market expertise by empowering private parties to sue competitors to protect their interests on a case-by-case basis.”

The Court did not address the merits of POM Wonderful’s claims against Coca-Cola, and the case was remanded for a determination of those issues.

Significance of the Decision

Even if trademark owners’ food and beverage labels are compliant with regulations of the FDCA or other government agencies, marketers of various products may still be vulnerable to potential Lanham Act claims. Marketers of all types of products must be cognizant that compliance with government labeling regulations is not a guarantee that their products’ names, labels and advertising do not constitute false advertising or otherwise violate the Lanham Act.

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