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Supreme Court Rules Competitors Can Bring Suit Against FDA-Regulated Labels

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On June 12, 2014, a unanimous Supreme Court of the United States ruled that competitors may bring federal false advertising and unfair competition claims against beverage labels that are regulated by the Food and Drug Administration (FDA) under the Food, Drug and Cosmetic Act (FDCA). *POM Wonderful LLC v. Coca-Cola Co.*, No. 12-761 (June 12, 2014).

Background

At issue in this case was POM Wonderful LLC's (POM) claim that a competing Minute Maid pomegranate juice blend sold by Coca-Cola Company (Coca-Cola) was being marketed in a deceptive manner. Coca-Cola identified its Minute Maid product on the front of the carton as "pomegranate blueberry flavored blend of 5 juices from concentrate with added ingredients and other natural flavors." This description complied with detailed FDCA labeling requirements for the kind of juice blend that Coca-Cola was marketing. However, POM complained—and the Supreme Court found—that the label presented the words "POMEGRANATE BLUEBERRY" in large, capital letters, with the remaining text "flavored blend of 5 juices" in much smaller type and the phrase "from concentrate with added ingredients and other natural flavors" in even smaller type. The undisputed facts showed that the Minute Maid juice blend contained 99.4 percent apple and grape juices, 0.3 percent pomegranate juice, 0.2 percent blueberry juice and 0.1 percent raspberry juice. The Supreme Court characterized the blueberry and pomegranate juice content as "miniscule."

POM sued Coca-Cola for false advertising and unfair competition in federal court in California under the federal Lanham Act, which proscribes (among other things) false or misleading descriptions of fact and misrepresentations about the nature, characteristics or quality of one's product. The California federal trial court and the U.S. Court of Appeals for the Ninth Circuit dismissed POM's complaint, ruling that a Lanham Act claim cannot be brought against a food and beverage label that complied with the FDCA. The California courts noted that the FDCA prohibits the misbranding of food and drink, and therefore the California courts concluded that a food or beverage label that complies with the FDCA's detailed labeling requirements cannot be challenged as misleading under a different federal statute like the Lanham Act.

The Supreme Court Decision

In a unanimous decision, the Supreme Court reversed the Ninth Circuit's decision, and held that the FDCA and the Lanham Act complement each other in the regulation of misleading labels. Despite the fact that both of these federal statutes address misleading statements of goods sold in commerce, the Supreme Court cited several reasons why the more specific FDCA requirements were merely a floor—and not a ceiling—on the question of whether a food and beverage label is misleading:

Neither the Lanham Act nor the FDCA by their terms prohibit or limit a Lanham Act claim against labels that are regulated by the FDCA. The Supreme Court noted that Lanham Act and the FDCA have coexisted for almost 70 years, and despite amendments to both statutes over the decades, Congress has never taken the opportunity to amend either law to prohibit a Lanham Act claim against a label regulated by the FDCA. Although many state law claims against food and beverage labels that comply with the FDCA were expressly pre-empted by one of the amendments to the FDCA, the Supreme Court found that Congress intended the federal Lanham Act and the FDCA to be complementary to each other.

The FDCA and the Lanham Act have largely different scopes and primary purposes. The Supreme Court found that the FDCA is designed "primarily to protect the health and safety of the public at large," whereas the Lanham Act protects competitors from "an injury to a commercial interest in sales or business reputation proximately caused by [a] defendant's misrepresentations." The Supreme Court found, therefore, that the two statutes provide "synergies" for consumer protection.

Threats of Lanham Act suits against labels that are authorized by the FDCA "provide incentives for manufacturers to behave well." Although the FDCA considers whether labeling is misleading when it prescribes an acceptable way to advertise a juice-blend beverage, the FDA acknowledged that it does not necessarily pursue enforcement actions against all objectionable labels, and a competitor cannot bring a lawsuit to enforce the FDCA. Moreover, according to the Supreme Court, the FDA "does not have the same perspective or expertise in assessing market dynamics that day-to-day competitors possess …. Competitors have detailed knowledge regarding how consumers rely upon certain sales and marketing strategies. Their awareness of unfair competition practices may be far more immediate and accurate than that of agency rulemakers and regulators."

What the Supreme Court Decision Means for Manufacturers and Advertisers

Manufacturers and advertisers would be wise to consider potential Lanham Act liability for all advertising claims, even in highly regulated industries. Though by its terms the Supreme Court's decision relates to the interplay between the FDCA and the Lanham Act, there is good reason to believe that the Supreme Court's decision may also be followed in relation to many other regulatory statutes, both inside and outside the food and beverage arena. Indeed, the Supreme Court found that the Lanham Act is broad in application and that the need for national uniformity is served by concurrent application of the Lanham Act and federal regulations: "The [Lanham] Act is uniform in extending its protection against unfair competition to the whole class it describes. It is variable only to the extent that those rights are enforced on a case-by-case basis. The variability [and non-uniformity with the FDCA]… is no different than the variability that any industry covered by the Lanham Act faces." [Emphasis added.]

In addition, the Supreme Court expressly rejected the U.S. government's position in this appeal that a Lanham Act claim should be precluded only "to the extent the FDCA or FDA regulations specifically require or authorize the challenged aspects of the label." In other words, the government argued that POM should not be able to bring a Lanham Act claim against Coca-Cola's use of the phrase

"pomegranate blueberry flavored blend of 5 juices from concentrate with added ingredients and other natural flavors" per se, but POM should be permitted to challenge aspects of the use of that phrase that are not "specifically require[d] or authorize[d]" by the FDA or FDCA, such as the relative type size of the words in that phrase. In rejecting the U.S. government's position, the Supreme Court noted "practical concerns" with differentiating between material that is specifically authorized by the FDA or FDCA. The Supreme Court also reiterated that Congress intended the Lanham Act and the FDCA to complement each other with respect to food and beverage labeling, and that the FDCA regulations are not a ceiling on the regulation of food and beverage labeling, even to the limited extent of the U.S. government's position. The Supreme Court cautioned that "an agency may not reorder federal statutory rights [such as the federal Lanham Act] without Congressional authorization."

While subsequent decisions of the federal court may add nuances to the Supreme Court's decision, the fact that the decision was unanimous suggests that there is no disagreement within the Supreme Court on the issues decided in this case. Unless a federal law expressly exempts an industry from Lanham Act liability, or until the courts expressly find that a particular industry is exempt from the Lanham Act, the safer assumption is that the Lanham Act applies.

What Clients Should Do

It remains a best practice to secure advance legal review of all labeling and advertising, both for regulatory requirements and for Lanham Act compliance. It would be unwise to assume that full compliance with federal regulations—even very detailed regulations like those embodied in the FDCA—insulate a party from a competitor lawsuit under the Lanham Act. The Supreme Court's decision suggests that it is not limited to the food and beverage industry, so parties in all industries would be wise to consider the Lanham Act in advertising review.

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