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Supreme Court Holds FDA Labeling Regulations Do Not Preclude Lawsuits Under the Lanham Act

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On June 12, 2014, the U.S. Supreme Court reversed the Ninth Circuit and unanimously held that compliance with the U.S. Food and Drug Administration's (FDA) fruit juice labeling rules does not preempt a claim of false advertising under the Lanham Act. *POM Wonderful LLC v. Coca-Cola Co.*, No. 12-761, 2014 U.S. LEXIS 4165, at *1, *32 (S. Ct. June 12, 2014).

Involved in a juicy battle since 2008, Pom sued Coca-Cola under the Lanham Act alleging that Coca-Cola misleadingly labeled its Pomegranate-Blueberry juice blend to trick consumers into thinking that the product consisted predominantly of pomegranate and blueberry juice when it consisted primarily of less expensive apple and grape juices. *Id.* at *14. That confusion, POM complained, caused it to lose sales on its more expensive pomegranate juice products. *Id.* Coca-Cola argued that it was in full compliance with the FDA labeling rules and that the Lanham Act claim was pre-empted by the labeling rules. *Id*. at *11, *25.

Justice Kennedy, writing for the Court, stated that the Coca-Cola blend contained a "minuscule amount of pomegranate and blueberry juice and specifically noted that the blend was made up of "99.4 percent apple and grape juices, 0.3 percent pomegranate juice, 0.2 percent blueberry juice and 0.1 percent raspberry juice." *Id.* at *14. Justice Kennedy seemingly telegraphed his opinion during oral arguments back in April when he said that even he was misled by the label into thinking that Coca-Cola's drink was mostly pomegranate.

However, the legal issue under consideration was not the misleading nature of the label, but rather, the interplay between two federal laws; the Federal Food, Drug and Cosmetic Act (FDCA) and the Lanham Act. *Id.* at *1. The FDCA forbids the misbranding of food by means of false or misleading labeling, while § 43 of the Lanham Act allows one competitor to sue another if it alleges unfair competition arising from false or misleading product descriptions. *Id.* at *7-8. Coca-Cola argued that an amendment to the FDCA preempted state and federal law, narrowed the scope of the Lanham act, and barred competitors from bringing mislabeling claims. *Id.* at *3-4. Previously, the Court of Appeals for the Ninth Circuit found for Coca-Cola and held that no matter how misleading Coca-Cola's marketing was, POM's false advertising claims were pre-empted by the FDCA. *See POM Wonderful LLC v. Coca-Cola Co.*, 679 F.3d 1170, 1179 (9th Cir. 2012).

The Supreme Court, unconvinced by Coca-Cola's argument that compliance with FDA labeling rules should somehow shield companies from mislabeling claims, held that the

FDCA does not preclude a competitor to sue under the Lanham Act based on false or misleading claims. *Id.* at *32. Justice Kennedy wrote that the FDCA and the Lanham Act complement each other in the regulation of misleading labels and "it would show disregard for the congressional design to hold that Congress nonetheless intended one federal statute to preclude the operation of the other." *Id.* at *3-5. He further wrote that the FDA "does not have the same perspective or expertise in assessing market dynamics that day-to-day competitors possess" and "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." *Id.* at *23. "Their awareness of unfair competition practices may be far more immediate and accurate than that of agency rulemakers and regulators." *Id.* As a result, the Supreme Court allowed POM to proceed with its case, reversing the judgment of the Court of Appeals for the Ninth Circuit and remanding the case for further proceedings consistent with its opinion. *Id.* at *32-33. Justice Breyer did not participate in the case.

Practical Significance

Before this decision, a company could comply with the FDA labeling requirements and remain insulated from the risk of a competitor's Lanham Act false advertising claim. Now, even if a company complies with the FDA requirements, it can still be sued by a competitor. Thus, *Pom Wonderful* chips away at the primacy of the FDA. *Pom Wonderful* may also prove to be a victory for consumers; the decision could translate into higher assurances for consumers that food and beverage labels are indeed what they say they are.

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