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U.S. Supreme Court Holds That FDA Rules Do Not Preclude Competitor Claim for Misleading Food Label

Court Clarifies Relationship Between Lanham Act Private Right of Action and FDA Authority

SUMMARY

In *POM Wonderful LLC v. Coca-Cola Co.*,¹ the Supreme Court yesterday resolved a split among the federal courts of appeals over whether private parties can assert claims that food or beverage labels are false or misleading, in violation of the Lanham Act,² even though such labels are regulated by the Food and Drug Administration (“FDA”) under the Food, Drug, and Cosmetic Act (FDCA). The Court held that competitors may bring such claims. It reasoned that the Lanham Act’s focus on unfair competition and the FDCA’s focus on health and safety are complementary, and that Congress did not intend the FDCA to preclude suit under the Lanham Act. The Court’s decision means that food and beverage manufacturers may be sued by competitors over the content of their product labels, even if those labels comply with FDA regulations.

BACKGROUND

The Lanham Act creates a cause of action for unfair competition based on false or misleading advertising, descriptions, or representations of any good. The FDCA, 21 U.S.C. § 301 *et seq.*, however, gives the FDA authority over the labelling of food and beverage products, and the FDA has issued regulations implementing that authority. The FDCA does not create a private right of action, and private parties may not bring claims to enforce either the FDCA itself or the FDA’s implementing regulations.

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The Coca-Cola Company markets and sells a fruit juice labeled as a “Pomegranate Blueberry Flavored Blend of 5 Juices.” The juice consists overwhelmingly of apple and grape juices blended with much smaller amounts of pomegranate, blueberry, and raspberry juices, but FDA regulations permit a manufacturer to name and advertise a juice blend using the names of juices that are not predominant in the blend by volume. POM Wonderful LLC (POM) markets and sells a pomegranate juice blend that competes with Coca-Cola’s product, and POM claimed that Coca-Cola’s label was false or misleading advertising in violation of the Lanham Act because it indicated to the public that the product consisted primarily of pomegranate and blueberry juices.

The district court dismissed POM’s Lanham Act claim as barred by the FDCA’s regulatory scheme,³ and the Ninth Circuit affirmed⁴ on the ground that Congress had entrusted the FDA with comprehensive authority over juice labeling. The Supreme Court granted review.

TODAY’S DECISION

In its decision, the Supreme Court held that the Lanham Act and the FDCA complement one another, and found no basis in “the text, history, or structure” of either law to suggest that Congress intended to prohibit private competitor suits under the Lanham Act. The Court also viewed the FDCA’s explicit preemption of state law as evidence that Congress chose not to preclude other bodies of law, rejecting Coca-Cola’s argument that the state-law preemption provision indicated Congress’s intent to create a uniform system of regulation under the sole authority of the FDA. The Court also found that the distinct remedies available under each act are complementary, and it contrasted the FDCA’s requirement that the FDA preapprove drug labels with the absence of any such pre-approval requirement for food and beverage labels. Preclusion would limit enforcement power in this area to the retrospective and discretionary actions of the FDA, resulting in “less policing of misleading food and beverage labels than in competitive markets for other products,”⁵ a result that the Court found Congress likely did not intend.

The Court also rejected the contention that Lanham Act claims should be precluded “where FDCA or FDA regulations specifically require or authorize the challenged aspects of [the] label,”⁶ which the government argued as *amicus curiae*. In doing so, the Court again pointed out that the two statutes are complementary, and that the FDCA and its implementing regulations do not constitute a “ceiling” on regulation of food and beverage labels.⁷ The FDA could not preempt the Lanham Act simply by promulgating regulations, the Court held, because “[a]n agency may not reorder federal statutory rights without congressional authorization.”⁸

IMPLICATIONS

Today’s decision opens the door for claims against food and beverage manufacturers by competitors over the content of product labels, even when those labels comply with FDA regulations. Manufacturers of certain other classes of products regulated by the FDA may also now face an increased risk of suit.

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It unlikely, however, that today's decision extends to pharmaceutical labelling, because the Court noted the difference between the FDA's pre-approval of pharmaceutical labels and its after-the-fact regulation of food and beverage labels.

Although the prospect of competitor suits under the Lanham Act may prompt manufacturers to review their labelling practices, the nature of the laws at issue somewhat limits the impact of today's decision. In light of the Court's *Lexmark* decision earlier this year, which held that consumers lack standing to sue under the Lanham Act, any impact will be limited to competitor suits.⁹

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ENDNOTES

- ¹ No. 12-761 (June 12, 2014).
- ² 15 U.S.C. § 1051 *et seq.*
- ³ See *POM Wonderful LLC v. Coca-Cola Co.*, 727 F. Supp. 2d 849 (C.D. Cal. 2010).
- ⁴ See *POM Wonderful LLC v. Coca-Cola Co.*, 679 F.3d 1170 (2012).
- ⁵ Slip. op. 15.
- ⁶ Slip op. 18.
- ⁷ *Id.*
- ⁸ *Id.* at 20.
- ⁹ *Lexmark International, Inc. v. Static Control Components, Inc.*, No. 12-873 (March 25, 2014).

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