

Client Alert

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U.S. Supreme Court Rejects Broad FDA Preclusion in *Pom Wonderful* Lanham Act Case

By Claudia M. Vetesi

On June 12, 2014, the U.S. Supreme Court issued an 8-0 ruling¹ in favor of Pom Wonderful in a long standing false advertising dispute against rival beverage company Coca-Cola. Reversing the Ninth Circuit's broad FDA preclusion ruling, the Supreme Court held that competitors can bring Lanham Act claims like Pom Wonderful's challenging food and beverage labels regulated by the FDA. While a blow to FDA primacy in the context of federal business-to-business Lanham Act claims, the Supreme Court made clear that *Pom Wonderful* does not address the preemption of state law claims. Despite this limitation, the ruling creates uncertainty for the food and beverage industry, and paves the way for more competitor false advertising disputes.

FACTS

Pom Wonderful (Pom) produces, markets, and sells pomegranate juice, including a pomegranate-blueberry juice blend. In 2007, Coca-Cola announced a new product in its Minute Maid line, called "Pomegranate Blueberry Flavored Blend of 5 Juices," which is 99% apple and grape juice. Pom sued Coca-Cola, alleging that the juice's name and other labeling features were misleading under the federal Lanham Act—a statute that allows competitors to sue based on the false or misleading description of goods (15 U.S.C. § 1125(a)).

Coca-Cola asserted that its label complied with the federal Food, Drug, and Cosmetic Act (FDCA) and, as such, Pom's claims were barred. The district court and Ninth Circuit agreed, finding that because Congress entrusted to the FDA the task of interpreting and enforcing the FDCA, the FDCA could operate to limit claims under the Lanham Act.

THE SUPREME COURT'S HOLDING: THE FDCA AND LANHAM ACT COMPLEMENT EACH OTHER IN THE FEDERAL REGULATION OF FOOD LABELS

The Supreme Court framed the issue in *Pom Wonderful* as involving the "intersection of two federal statutes" that have co-existed for over 70 years. Against this backdrop, the Court held that the statutes complement each other in the federal regulation of misleading food and beverage labels, and one statute should not be read to preclude operation of the other. The opinion was based on the following premises:

Not a Preemption Case. The Justices stated plainly: "this is not a pre-emption case." They also made clear that the case did "not raise the question whether state law is pre-empted by a federal law." Despite this limitation, the Court's broad statements about the force of FDA regulations may provide fodder for plaintiffs in consumer class action suits, as discussed further below.

¹ Justice Stephen Breyer recused himself.

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The Statutes Are Complementary. In line with its view that the case presented an issue of statutory construction, the Court relied heavily on the fact that neither the Lanham Act nor the FDCA expressly forbids or limits Lanham Act claims. To the contrary, the Court found that the statutes are complementary: both “touch on food and beverage labeling, but the Lanham Act protects commercial interests against unfair competition, while the FDCA protects public health and safety.” And in terms of remedies, the Court noted that the FDA does not pursue enforcement measures against all objectionable labels, so permitting competitors to pursue Lanham Act claims helps police labeling in the industry.

The Desire for National Uniformity Does Not Support Preclusion. The Court noted that while Congress intended for national uniformity in food labeling, that did not indicate that “Congress intended to foreclose private enforcement of other federal statutes.” Moreover, it reiterated that the FDCA contains an express preemption clause that applies to *state* law, not federal law: “[P]re-emption of some state requirements does not suggest an intent to preclude federal claims.”

The Government’s Middle of the Road Proposal Is Unworkable. The federal government submitted an amicus brief that proposed a middle of the ground position: “that a Lanham Act claim is precluded ‘to the extent the FDCA or FDA regulations specifically require or authorize the challenged aspects of [the] label.’” The Justices rejected this rule, finding that it assumed that the FDCA and its regulations “are a ceiling” on the regulation of food and beverages.

CONCLUSION: WHAT POM WONDERFUL MEANS FOR THE FOOD AND BEVERAGE INDUSTRY

Pom Wonderful creates uncertainty as to what is sufficient on a food or beverage label. The Supreme Court made clear that compliance with the FDCA and FDA regulations does not immunize a company from a lawsuit, at least one based on a competitor-to-competitor federal Lanham Act claim. As such, to avoid potential claims by competitors, food and beverage companies will now need to review their labels for more than just compliance with FDA regulations. While the Supreme Court went to lengths to limit its opinion to Lanham Act claims, its general holding that FDA regulations are not a “ceiling” is likely to tempt plaintiffs to latch onto this rationale in trying to avoid preemption for state law consumer class action claims.

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