

PATTERSON BELKNAP SECURES MAJOR WIN FOR COCA-COLA: Ninth Circuit Holds False Advertising Claims Against FDA- Authorized Label Are Barred

The U.S. Court of Appeals for the Ninth Circuit held last week that The Coca-Cola Company cannot be sued under the Lanham Act over the name and labeling of a juice product that is authorized by FDA regulations. In doing so, the Court handed Coca-Cola a significant victory in a hard-fought case waged by the maker of Pom Wonderful pomegranate juice.

In 2008, Pom Wonderful sued Coca-Cola alleging that the name and label of its Minute Maid Pomegranate Blueberry Flavored Blend of 5 Juices gives consumers the false impression that the product is mostly pomegranate and blueberry juice when, in fact, the product is a blend of juices that includes small amounts of pomegranate and blueberry juice for flavor. In naming and labeling the juice, however, Coca-Cola scrupulously followed the FDA's detailed regulations governing flavored juice blends. The trial court granted summary judgment in favor of Coca-Cola, holding that allowing Pom to use the Lanham Act to dispute an FDA-authorized juice label would undermine FDA's authority. The Ninth Circuit agreed.

The case presented the important question whether one federal statutory scheme (in this case, the Federal Food, Drug, and Cosmetic Act and FDA regulations) can preclude causes of action under another federal statute such as the Lanham Act. The Ninth Circuit recognized that the answer must be "yes."

Courts "must generally prevent parties from undermining, through private litigation, the FDA's considered judgments," the Ninth Circuit wrote, and courts also "must keep in mind that we lack the FDA's expertise in guarding against deception in the context of juice beverage labeling." Thus, if Pom is unhappy about the labeling of its competitors' products, "the appropriate forum for Pom's complaints is the FDA."

The Ninth Circuit affirmed the dismissal of Pom's federal claims, but remanded the case to the district court to reconsider whether Pom has standing to pursue its claims under California state law in light of two recent decisions from the California Supreme Court. In doing so, however, the Ninth Circuit noted that, even if the district court determines that Pom has standing, it will also "need to address such issues as whether Pom's state law claims are expressly preempted and whether California's safe-harbor doctrine insulates Coca-Cola from liability on any of Pom's state law claims" – defenses that the district court has previously indicated would likely result in judgment in favor of Coca-Cola.

The Ninth Circuit's decision is the clearest articulation to date of the principle that "the Lanham Act may not be used as a vehicle to usurp, preempt, or undermine FDA authority." As such, it gives all advertisers of FDA-regulated products something to celebrate.

The Patterson Belknap team representing Coca-Cola was led by Steve Zalesin, Sarah Zgliniec and T.J. Tu. ♦

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