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POM Wonderful Decision: Companies Cannot Rely on FDCA for Protection from False Advertising Liability

The US Supreme Court allows private parties to bring Lanham Act claims challenging product labels that otherwise satisfy the Food, Drug, and Cosmetic Act.

In a battle of the beverages, the Supreme Court recently reversed the Ninth Circuit decision in *POM Wonderful LLC v. Coca-Cola Co.*, thereby allowing companies to initiate false advertising lawsuits against competitors whose products satisfy the Food, Drug, and Cosmetic Act (FDCA) and its implementing regulations, but could otherwise mislead consumers.[1] This decision foreshadows the increasing likelihood that companies regulated by the FDCA will be the target of false advertising lawsuits in various jurisdictions across the country, where local false advertising standards may vary. As compliance with the FDCA and its implementing regulations is no longer sufficient to ward off lawsuits, companies should consider conducting an audit of existing product labels to ensure their compliance with the Lanham Act, monitor court decisions implementing the *POM* case, and carefully screen all advertisements before publication for compliance with the FDCA and Lanham Act.

Background

In 2008, POM Wonderful (POM) sued Coca-Cola alleging that Coca-Cola violated the false advertising provisions of the Lanham Act (15 U.S.C. § 1125(a)) because its new juice, Pomegranate Blueberry Flavored Blend of 5 Juices (the Drink), displayed pomegranates and blueberries on the label and in the name of the Drink, even though these juices did not predominate within the Drink itself. A California District Court granted summary judgment for Coca-Cola ruling that the FDCA's existing regulations, which permitted this label, barred POM's challenge because the regulations already directly addressed the issues that formed the basis of the Lanham Act claim. In affirming this decision, the Ninth Circuit Court of Appeals held the FDCA precludes claims under the Lanham Act that would require litigating whether a party's conduct violated the FDCA as that "would risk undercutting the [United States Food and Drug Administration's ("FDA")] expert judgment and authority."[2] The Supreme Court reversed the Ninth Circuit's decision, finding that the FDCA and the Lanham Act complement each other, and Congress did not intend the FDCA to preclude Lanham Act claims.

The Relevant Statutory Provisions

The Lanham Act[3] and the FDCA[4] both contain provisions governing the naming, labeling, marketing, and advertising of products. The Lanham Act broadly prohibits any false or misleading descriptions or representations "in connection with any goods." The FDCA comprehensively regulates food and beverage labeling and provides that a food or beverage is misbranded if "its labeling is false or misleading in any particular," or "[i]f any word, statement, or other information required…to appear on the label or labeling is not prominently placed thereon with such conspicuousness…and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use."

Critically, the FDCA may only be enforced by the FDA or the Department of Justice, while the Lanham Act can be enforced by any private party "who believes that he or she is likely to be damaged by the use of that false description or representation."

Given the subject-matter overlap between the statutes, a Lanham Act claim potentially could have circumvented the exclusive enforcement mechanism of the FDCA. In other words, if a Lanham Act claim was allowed to proceed against a product controlled by the FDA, the Lanham Act claim could encroach upon the exclusive enforcement authority Congress granted the FDA and allow a private party to impact the ultimate application of the FDCA.

The Supreme Court's Analysis

To resolve the potential overlap between the statutes, the Court analyzed the scope and purpose of each statute. While the FDCA is designed to protect the health and safety of the public at large and can only be enforced by the FDA, the goal of the Lanham Act is to protect persons engaged in interstate commerce against unfair competition and can be enforced by any aggrieved party, especially commercial competitors.

Given the two statutes' different scopes and purposes, the Court found that the two statutes complemented each other and any perceived overlap would benefit consumers. Specifically, the FDCA and its regulations set minimum requirements for products and primarily protected the health and safety of consumers, while the Lanham Act filled any gaps, provided an economic disincentive for false advertising, and brought the expertise of competitors to bear upon potentially false advertisements. The Court noted that the combination of FDA enforcement actions and private claims under the Lanham Act would best take advantage of the "synergies in multiple methods of regulation."

The Court further focused on principles of statutory interpretation to find that neither the Lanham Act nor the FDCA expressly forbade or limited Lanham Act claims challenging labels that are already regulated by the FDCA. The Court found this was powerful evidence that Congress did not intend FDA oversight to be the exclusive means of ensuring proper food and beverage labeling. Further, Congress' express preemption of only some state laws in the Nutritional Labeling and Education Act indicated that Congress did not intend the FDCA to preclude requirements arising from other sources, such as the Lanham Act.

Lastly, the Court rejected reliance on FDA regulations as specifically authorizing the Drink name and therefore barring a Lanham Act claim. The Court stated that FDA rulemaking did not discuss the Lanham Act and, furthermore, an agency may not reorder federal statutory rights without Congressional authorization.

Conclusion

The Court's decision should certainly prompt companies to look more closely at their own product names and labels, as well as their competitors' products, to ensure compliance with both the FDCA and Lanham Act. As Lanham Act claims may be brought in the various regional federal circuits, all of which may apply differing standards or reach contrary or conflicting decisions, companies should closely monitor developments in the law and continue to engage in careful advertising clearance efforts.

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Endnotes

[1] *POM Wonderful LLC v. Coca-Cola Company*, No. 12-761, slip op. (S. Ct. June 12, 2014).

[2] *PhotoMedex, Inc. v. Irwin*¸ 601 F. 3d 919, 924 (9th Cir. 2010).

[3] 15 U.S.C. § 1125(a)

[4] 21 U.S.C. § 343(a)(1); 21 U.S.C. § 343(f); 21 U.S.C. § 337(a)