

ALERT

Supreme Court Widens Door For Lawsuits Based on Deceptive Labeling

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Yesterday, a unanimous Supreme Court reversed the lower courts' rulings and held that the Federal Food, Drug and Cosmetics Act (FDCA) does not preclude a competitor's claims for unfair competition under the Lanham Act which arise from false or misleading statements on food and beverage labels that comply with the FDCA. *POM Wonderful LLC v. The Coca Cola Company*, No. 12-761 (June 12, 2014).

POM Wonderful (POM), a manufacturer and distributor of pomegranate-based beverages, sued Coca-Cola (Coke) for unfair competition under the Lanham Act based on Coke's description of a juice product sold under its Minute Maid label as "pomegranate blueberry flavored." POM, which manufactures a much more expensive juice comprised of 85% pomegranate juice, claims that the Coke label is misleading because the beverage actually contains only 0.5% pomegranate and blueberry juice combined. POM contends that Coke's prominent use and display of "pomegranate blueberry flavored" is likely to lead consumers to believe that the Coke product contains a significant amount of pomegranate juice, and thereby damages POM's sales.

Coke argued successfully at trial and on appeal before the Ninth Circuit Court of Appeals that POM's Lanham Act claims are precluded because Coke's label complies with the requirements of the FDCA. Coke claimed that the FDCA vests authority in the Food and Drug Administration (FDA) to determine the accuracy of product labels; and that the FDCA allows products to be described using "minority" ingredients.

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The Supreme Court, in a decision written by Justice Anthony Kennedy, reversed the Ninth Circuit and paved the way for POM's suit to go forward. The Court rejected the idea that the FDCA in any way preempts the Lanham Act, finding that the Lanham Act and the FDCA complement each other, "for each has its own scope and purpose. 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." Slip Op. at 12, citing *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, No. 12-873, Slip Op. at 4 (Mar. 25, 2014). Furthermore, the Court recognized that competitors are in a unique position by possessing detailed knowledge of the marketplace: "Lanham Act suits draw upon this market expertise by empowering private parties to sue competitors to protect their interests..." *Id.* The Court also rejected the argument made by the Government as *amicus curie* 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," finding that there is no evidence that the FDA considered the full scope of the interests the Lanham Act protects. *Id.* at 15. Further, the Court flatly rejected the Government's position that would "preclude private parties from availing themselves of a well-established federal remedy because an agency enacted regulations that touch on similar subject matter but do not purport to displace that remedy or even implement the statute that is its source....An agency may not reorder federal statutory rights without congressional authorization." *Id.* at 17. The POM Wonderful suit will now proceed to trial, if it is not settled—Coca-Cola already has indicated that it intends to continue the fight back in the trial court.

The decision is likely to raise concerns among food and drug labelers and may lead to an increase in lawsuits by competitors over misleading labeling. The Court's ruling ensures that mere compliance with FDA labeling and packaging regulations will not immunize such businesses from lawsuits under the Lanham Act.

Wiley Rein filed an *amicus* brief on behalf of the U.S. Chamber of Commerce and the Grocery Manufacturers Association in this case.