

Food and Beverage Team, Intellectual Property and
Antitrust and Competition Client Service Groups

To: Our Clients and Friends

June 12, 2014

U.S. Supreme Court Allows Private Lanham Act Suits Against Product Labels Otherwise Compliant With Federal Law

Today, the Supreme Court issued an 8-0 opinion in *Pom Wonderful LLC v. Coca-Cola Co.*, finding that the substantive advertising and labeling provisions of the Federal Food Drug and Cosmetic Act (“FDCA”) do not preclude a competitor from asserting a false advertising claim under section 43 of the Lanham Act. This opinion opens the door for a company to assert Lanham Act claims against a competitor even where a product’s labeling and advertising otherwise meet the requirements of a prescriptive statute like the FDCA.

POM Wonderful is often credited with creating the market for pomegranate juice in the United States. However, in the late 2000s, POM Wonderful began losing market share to other beverage companies selling drinks claiming to contain pomegranate juice. In 2008, POM Wonderful filed suit against Coca Cola, which owns the Minute Maid brand, alleging that Minute Maid’s “Pomegranate Blueberry Flavored Blend of 5 Juices” drink contained 0.5 percent combined of pomegranate and blueberry juices. Instead, the drink was comprised largely of apple and grape juices. POM Wonderful also alleged that the drink’s label was misleading in that it highlighted the terms “Pomegranate Blueberry” and showed a pomegranate larger than other fruits also appearing on the label.

Coca Cola, on the other hand, argued that it met all content and labeling requirements of the FDCA, which is administered by the FDA, and thus its labeling was by definition not false or misleading. The Ninth Circuit Court of Appeals ruled in favor of Coca-Cola, finding that the food labeling and advertising laws of the FDCA precluded private lawsuits under the Lanham Act.

Although often described as an issue of preemption, the Court first explained that this is a preclusion case, not a preemption case, and that normal statutory interpretation principles would apply. The Supreme Court noted that neither statute expressly precludes Lanham Act claims challenging labels regulated by the FDCA. The Court then explained that the statutes were complementary, not contradictory, and have coexisted for nearly 70 years. The Lanham Act is designed to protect commercial interests against unfair competition, while the FDCA is designed to protect public health

and safety. The FDCA is designed to be enforced by the FDA, while the Lanham Act gives private parties the right to protect their interests. As such, there is no indication that the statutes conflict, and the Court found that to hold otherwise would hold the food and beverage industry to different standards under the Lanham Act than other less-regulated industries.

The Court then turned to Coca-Cola's argument that Congress intended national uniformity in food and beverage labeling, and to permit Lanham Act claims would impede such uniformity. The Court was unpersuaded, finding that there was no clear Congressional intent to preclude Lanham Act claims or foreclose private enforcement of other federal statutes. Again, the Court distinguished this situation from state law preemption, where a myriad of state laws could truly create a regulatory patchwork. Rather, although this decision "may give rise to some variation in outcome, this is the means Congress chose to enforce a national policy to ensure unfair competition."

The Court also addressed an issue raised by the federal government in an amicus brief. The federal government argued 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." Again, the Court was unpersuaded, finding that the statutes complement each other and could be applied simultaneously. Indeed, the court concluded:

It is necessary to recognize the implications of the United States' argument for preclusion. The Government asks the Court to 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. Even if agency regulations with the force of law that purport to bar other legal remedies may do so . . . , it is a bridge too far to accept an agency's after-the-fact statement to justify that result here. An agency may not reorder federal statutory rights without congressional authorization.

In the end, the Court reversed the Ninth Circuit and remanded the case for further proceedings.

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If you would like to discuss how this matter may affect your organization, please speak with your regular Bryan Cave contact, any of the members of our [Food and Beverage Team](#), [Intellectual Property Client Service Group](#), or [Antitrust and Competition Client Service Group](#), or the authors of this alert:

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