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CLIENT ALERT

Supreme Court Permits Lanham Act Challenge to Beverage Label Regulated by the FDA

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The Supreme Court, in a highly anticipated decision, has held that a private party may bring an action under Section 43(a) of the Lanham Act to challenge a product label that is regulated by the Federal Food, Drug and Cosmetic Act (FDCA). In reversing the decision of the Court of Appeals for the Ninth Circuit, the Supreme Court found that a competitor who objected to the use of the words "Pomegranate Blueberry" on a label for a fruit juice drink that contained small amounts of pomegranate and blueberry juice was not precluded from proceeding with a claim for false advertising notwithstanding the fact that the label was in compliance with the FDCA and its implementing regulations. The decision is important because it signals that compliance with federal regulations does not necessarily exempt a party from claims under the Lanham Act challenging the regulated activity. *POM Wonderful LLC v. Coca-Cola Company*, 573 US ___ (June 12, 2014). A copy of the opinion can be found here.

The case involves the intersection of two federal statutes. Section 43(a) of the Lanham Act creates a private right of action for unfair competition through false or misleading advertising and labeling. The FDCA prohibits the use of false or misleading labeling on food and beverage products. A competitor alleging injury caused by false advertising may sue for relief under the Lanham Act but not under the FDCA, which the FDA enforces.

Coca-Cola sells a fruit juice drink, under its Minute Maid brand, with a label that displays the words "Pomegranate Blueberry" followed in smaller type by the phrase "Flavored Blend of 5 Juices." The drink contains 99 percent apple and grape juice and 0.3 percent pomegranate juice and 0.2 percent blueberry juice. Although the label was never expressly pre-approved by the FDA (and is not required to be), there was no dispute below that the term "Pomegranate Blueberry" complied with the FDCA and related regulations, which permit a label to feature the names of characterizing flavors so long as the label indicates that those juices are present as flavors.

POM Wonderful, a competitor, brought an action for false advertising under Section 43(a) of the Lanham Act and related state laws, alleging that the use and relative prominence of the term Pomegranate Blueberry was misleading. The District Court for the Central District of California granted partial summary judgment in favor of Coca-Cola finding that the FDCA precludes a Lanham Act challenge. (The District Court also found the state law claims to be preempted but those claims were not before the Supreme Court). The Court of Appeals for the Ninth Circuit affirmed exercising deference to the expertise of the FDA in the field.

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The Supreme Court, in a unanimous decision written by Justice Kennedy, reversed and remanded. Justice Kennedy begins his analysis by noting that because there is no issue with respect to state law "this is not a preemption case." Instead it "concerns the alleged preclusion of a cause of action under one federal statute [the Lanham Act] by the provisions of another federal statute [the FDCA]."

After considering the purpose and scope of the two federal statutes, Justice Kennedy readily concluded that Congress did not intend for the FDCA to preclude the Lanham Act. To the contrary, he wrote, Congress intended the two statutes to be complimentary. As support for this conclusion, Justice Kennedy noted that there is nothing in either the Lanham Act or the FDCA to expressly prohibit such Lanham Act claims notwithstanding 70 years of coexistence in which both statutes were amended. He also found that the Lanham Act and FDCA complemented each other in major respects as each has its own scope and purpose. The Lanham Act primarily protects commercial interests against unfair competition while the FDCA protects public health and safety.

In contrast to the lower courts, which deferred to the expertise of the FDA on the issue of food and beverage labeling, the Supreme Court suggests that sole reliance on the regulations and enforcement activities of the FDA will not be sufficient to secure the mutual purposes of both acts to protect competitors and consumers. Indeed, Justice Kennedy concludes that the FDA does not have the same perspective, expertise or incentive in assessing market dynamics that day-to-day competitors possess. Accordingly, permitting Lanham Act claims will take advantage of "synergies among multiple methods of regulation" that would not otherwise exist. He also notes that the FDA has a "less extensive role" in the regulation of food than in the regulation of drugs and that the FDA does not take enforcement actions against all objectionable food and beverage labels. Justice Kennedy reasoned that if Lanham Act claims were precluded, under these circumstances, commercial interests and, indirectly, the public could be left with less effective protection in the food and beverage labeling realm than in many other less regulated industries – a result that Congress was unlikely to have intended.

The Supreme Court made no finding on the merits and reversed and remanded to the District Court. Justice Breyer abstained from the decision.

The decision could have widespread implications in the food and beverage industry, which may have to reevaluate existing labeling practices and procedures as it is now clear that compliance with FDA regulations may not be enough to defend against claims of false advertising under the Lanham Act. A competitor will be able to allege that, notwithstanding label compliance with FDA requirements, the label nevertheless makes a false or misleading claim. Challenges to product names and label descriptions have been relatively rare under the Lanham Act, and it remains to be seen if Supreme Court's decision will unleash a new wave of such litigation against food and beverage makers. Nevertheless, the decision could lead to increased scrutiny of competitor product labeling in the food and beverage industry.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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