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Food and Beverage Companies Beware: More False Advertising Claims Are Likely

On June 12, 2014, the United States Supreme Court issued a unanimous opinion in *POM Wonderful LLC v. Coca-Cola Co*., No. 12-761, finding that the U.S. Food and Drug Administration's (FDA) regulation of food and beverage labeling under the Federal Food, Drug, and Cosmetic Act (FDCA) does not preclude a competitor from asserting a claim for false and misleading product labeling under the federal Lanham Act. This decision allows a company in the food and beverage industry to bring Lanham Act claims against a competitor for misleading or deceptive advertising even when a product label complies with FDA regulations.

In 2008, POM Wonderful, makers of a pomegranate-blueberry juice blend, sued Coca Cola for violation of the Lanham Act, a federal statute that provides a private right of action to challenge a competitor's false advertising. POM Wonderful alleged that the name, label, marketing and advertising of one of Coca Cola's juice beverages, sold under the Minute Maid brand, misled consumers to believe the product consists predominately of pomegranate and blueberry juice, yet only contains 0.3% pomegranate juice and 0.2% of blueberry juice. POM Wonderful took issue with Cola Cola's label that highlighted the terms, "Pomegranate Blueberry," with the words "Flavored Blend of 5 Juices" in a smaller font and showed a pomegranate larger than the other fruits also appearing on the label.

Coca Cola successfully argued at both the district court and the Court of Appeals for the Ninth Circuit that POM Wonderful's Lanham Act claim is barred by the FDCA because its label complies with the applicable FDA regulation addressing the labeling of juice blends. In barring POM Wonderful's Lanham Act claim, the Ninth Circuit explained, "for a court to act when the FDA has not—despite regulating extensively in this area—would risk undercutting the FDA's expert judgments and authority."

The Supreme Court reversed the Ninth Circuit, holding that compliance with the FDCA does not preclude a Lanham Act claim. The Court noted that there is nothing in the text, history, or structure of the Lanham Act or the FDCA to indicate that Congress intended the use of one to preclude the other. The Court explained that the FDCA and the Lanham Act are supposed to complement each other's scope and intention—the Lanham Act protects commercial interests against unfair competition, while the FDCA protects public health and safety. The case will

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now return to the trial court for resolution.

Food and beverage companies should be aware of the potential ramifications of the *POM Wonderful* decision. There is no longer any question that food and beverage companies can bring false advertising claims against their competitors. In light of this, food and beverage companies should expect to see an increase in these types of lawsuits, even when the challenged label complies with the applicable FDA regulations. Therefore, it is critical that food and beverage companies proceed with caution when labeling products (for example, in their use of specific images and font size, among other things). Companies must be certain that their labels comply not only with the relevant FDA regulations, but also that they are not susceptible to false or misleading labeling or advertising claims in violation of the Lanham Act.

If you would like to know more about how the POM Wonderful decision may affect your business, your Reinhart attorney or a Reinhart attorney specializing in food and beverage law would be glad to help you.

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