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SUPREME COURT OPENS DOOR TO FOOD AND BEVERAGE LABEL CHALLENGES UNDER LANHAM ACT

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The United States Supreme Court paved the way on June 12 for competitors to challenge FDA-regulated food and beverage labels under the Lanham Act. The Court's opinion in *POM Wonderful LLC v. The Coca-Cola Co.*, is the latest chapter in a long-running feud between the two beverage companies. The dispute arose in 2008 when POM accused Coke of mislabeling one of its fruit juice blend products with the prominent title "pomegranate blueberry," even though the product allegedly consisted mostly of less expensive apple and grape juices. To date, Coke had successfully persuaded the Central District of California and the Ninth Circuit that POM's Lanham Act claims were precluded by the Federal Food, Drug, and Cosmetic Act and attendant FDA regulations addressing the labeling of fruit juice blends.

However, Justice Kennedy, writing for a unanimous Supreme Court, rejected this reasoning and instead held that Congress intended the Lanham Act and the FDCA to "complement each other with respect to food and beverage labeling." The Court noted that neither the FDCA nor the Lanham Act expressly prohibits Lanham Act claims challenging FDA-regulated labels, even though the statutes have coexisted for 70 years and undergone numerous amendments. The Court emphasized that the FDCA expressly preempts certain state law claims but is silent as to federal causes of action. Additionally, the Court determined that the Lanham Act and FDCA complement one another because they serve different purposes. That is, the Lanham Act protects commercial interests, while the FDCA protects public health and safety. As the Court explained, the FDA "does not have the same perspective or expertise in assessing market dynamics that day-to-day competitors possess." The Court also rejected the notion that preclusion of Lanham Act claims was necessary to achieve Congress's goal of "national uniformity in food and beverage labeling." Although the Court acknowledged that application of the Lanham Act could lead to "some variation in outcome," it concluded that Congress intended to permit Lanham Act claims as a means "to enforce a national policy to ensure fair competition" because it chose not to apply the FDCA's express preemption clause to them.

In one sense, the Supreme Court's sweeping opinion will have a broad and decisive impact on food and beverage advertisers. Lanham Act suits challenging FDA-regulated label claims are now fair game, and food and beverage advertisers must ensure that their labels comply with both FDA and Lanham Act requirements. In effect, this may mean more onerous labeling requirements than the FDA would otherwise mandate, especially in instances where a label claim may still be misleading despite complying with FDA regulations. At the same time, advertisers should take comfort in knowing the limits of the Supreme Court's decision. The Court's holding applies only to Lanham Act challenges between competitors and should not affect the current law regarding the FDCA's express preemption of state law claims. Furthermore, the Court noted that the "FDA does not preapprove food and beverage labels" and suggested that the outcome may have been different if the FDA did preapprove food and beverage labels. As such, product labels that are subject to preapproval by the FDA, USDA, or other agencies may be entitled to heightened protection from Lanham Act claims. Although future decisions will clarify the scope and true impact of the Court's decision, for now it appears that food and beverage advertisers will have more exposure for their own label claims, but also a better weapon for challenging the claims of their competitors.