

U.S. Supreme Court to Decide Standing Requirement to Bring False Advertising Claim

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In certain states, only an actual competitor may bring a false advertising claim under the Lanham Act. This may soon change. On June 3, 2013, in *Lexmark International Inc. v. Static Control Components Inc.* (Case No. 12-873), the U.S. Supreme Court agreed to review a decision by the U.S. Court of Appeals for the Sixth Circuit holding that a non-competitor has standing to allege a claim of false advertising under the Lanham Act. The parties are Lexmark International, Inc. (“Lexmark”) and Static Control Components, Inc. (“Static Control”). Lexmark asserted various copyright and patent infringement claims against Static Control related to, among other things, Static Control’s manufacture and sale of microchips used by remanufacturers of toner cartridges for Lexmark’s laser printers. As one of its counterclaims, Static Control asserted false advertising under the Lanham Act, alleging that Lexmark falsely informed customers that Static Control’s products infringed Lexmark’s purported intellectual property, thus damaging Static Control’s business and reputation. The Sixth Circuit determined Static Control had standing to bring such a claim, even though Static Control was not a laser printer manufacturer and therefore not a direct competitor. The Sixth Circuit held that a claimant has standing if it can demonstrate (1) a “reasonable interest” to be protected against the alleged false advertising and (2) a reasonable basis for believing that the interest is likely to be damaged by the alleged false advertising. While this standard is also applied by the Second Circuit, it contrasts with the standard used by the Seventh, Ninth, and Tenth circuits which permits Lanham Act suits only by an actual competitor. The Third, Fifth, Eighth, and Eleventh circuits follow yet another standard. By granting the petition for writ of certiorari, the U.S. Supreme Court will hopefully resolve the disagreement among the United States circuit courts as to who has standing to sue for a false advertising claim.

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