

POM v. Coca-Cola Has Little Effect on Consumer Class Action Claims for Deceptive Labeling

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The Supreme Court's recent decision in *POM Wonderful LLC v. Coca-Cola Company* could have redefined the consumer class action landscape with respect to claims for the deceptive labeling of food products. Instead, the decision narrowly focused on actions brought by and against industry competitors for such mislabeling, creating little impact on consumer-driven suits. 2014 WL 2608859 (2014) POM brought a claim against Coca-Cola under the Lanham Act,^[1] arguing that Coca-Cola misrepresented the content of its pomegranate juice, causing injury to POM's sales of its competing product.^[2] Coca-Cola asserted that its product's label already complied with the Federal Food, Drug, and Cosmetic Act (FDCA),^[3] rendering POM's argument moot.^[4] The District and Circuit courts agreed with Coca-Cola that the FDCA and its regulations precluded POM's challenges to the labeling under Lanham. The Supreme Court disagreed, finding no statutory provision or Congressional interpretation that suggested the FDCA's precedence over similar statutes. The Court found that the FDCA and Lanham Act are "complementary and have separate scopes and purposes." Furthermore, it held that neither statute "discloses a purpose" by Congress to bar competitor lawsuits like the one brought by POM.^[5] The Court was able to reconcile the Lanham Act and the FDCA – as Lanham covers commercial interests and the FDCA covers health and safety concerns.^[6] In this manner, the FDCA acts as a statutory floor for food label compliance, while market and commercial interests can impose greater restrictions if further protections are deemed necessary.^[7]

Nothing in the Lanham Act suggests that a consumer can bring an action as a competitor in the market. Thus, a consumer who believes he was deceived by a label into purchasing a product may have a private cause of action, but no remedy under the Lanham Act. The *POM* decision also upholds the notion that the FDCA preempts state law consumer claims under the FDCA. As a result, after *POM*, the industry remains sheltered from consumer class actions that are based on the Lanham Act or FDCA violations. Nonetheless, consumer class actions based on allegedly misleading labels will continue to challenge the industry. The Supreme Court's decision in *POM* made this clear, noting that its decision does not change state consumer protection laws or consumer suits. And while the Court

never explicitly referenced the theory, it is likely that consumers will argue that there is room to bring claims without FDCA preemption after the *POM* decision. This theory posits that the FDCA is only a floor for deceptive labeling and that there may be room for consumer enforcement to ensure enhanced industry compliance. In the end, the industry still faces steep hurdles defending food label consumer class actions. The *POM* decision did not necessarily open the door to class actions as many had feared it would, but it may have provided some degree of encouragement for consumers hoping to continue to bring deceptive labeling claims.

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