

## ALERTS

### **Advertising And Marketing And Food, Drug And Device Law Alert - Supreme Court Holds Competitors May Bring False, Misleading Product Descriptions Claims On Food, Beverage Labels**

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In *POM Wonderful LLC v. Coca-Cola Co.*, No. 12-761, the Supreme Court unanimously reversed the district court and Ninth Circuit decisions, finding there was no conflict between the Lanham Act, which protects competitors and competition, and the Food, Drug and Cosmetic Act (FDCA), which protects consumer's health and safety.

POM sued Coca-Cola, claiming the Coca-Cola (under the Minute Maid brand) juice labeled "Pomegranate Blueberry Flavored Blend of 5 Juices" was false and misleading, as the juice contains 99.4% apple and grape juices, with only minuscule amounts of pomegranate juice and features on its product's label a picture of all five fruits and the words "Pomegranate Blueberry" in a larger font than the words "Flavored Blend of 5 Juices." POM Wonderful markets a juice labeled "Pomegranate Blueberry 100% Juice," which consists entirely of pomegranate and blueberry juices.

The court held that neither the Lanham Act nor the FDCA, in express terms, forbids or limits Lanham Act claims challenging labels that are regulated by the FDCA, and Congress did not intend FDA oversight to be the exclusive means of ensuring proper food and beverage labeling.

This decision is important to all businesses subject to food- and beverage-labeling requirements under the FDCA as compliance with the FDCA does not alleviate the need to also evaluate the label claims to determine if they are false or misleading under the Lanham Act.

For more information, contact the Barnes & Thornburg attorney with whom you work or a member of the firm's Intellectual Property Law Department in the following offices: Atlanta (404-846-1693), Chicago (312-357-1313), Columbus (614-628-0096), Delaware (302-300-3434), Elkhart (574-293-0681), Fort Wayne (260-423-9440), Grand Rapids (616-742-3930), Indianapolis (317-236-1313), Los Angeles (310-284-3880), Minneapolis (612-333-2111), South Bend (574-233-1171), Washington, D.C. (202-289-1313). You can also visit online at [www.btlaw.com/intellectualproperty](http://www.btlaw.com/intellectualproperty).

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