Q&A: Pom Wonderful, Coca-Cola Case May Impact Labeling Laws

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Interview with Claudia Vetesi, Consumer Litigation and Product Liability Attorney, Morrison & Foerster

Pom Wonderful and Coca-Cola have been in a dispute since 2008 over Coca-Cola brand Minute Maid's "Pomegranate Blueberry Flavored Blend of 5 Juices." Pom filed suit against Coca-Cola, arguing that the juice's label is misleading because 99 percent of the product is comprised of either apple or grape juice. The case has been taken on by the U.S. Supreme Court [1] and could result in broad changes in food labeling litigation and requirements.

Food Manufacturing spoke with Claudia Vetesi of Morrison & Foerster about the details of the case and its possible implications for food manufacturers.

Q: How could this ruling affect the food manufacturing and labeling environment?

A: If the Supreme Court rules that mere compliance with Food and Drug Administration regulations does not shield companies from mislabeling claims, this could create uncertainty within the food industry. Manufacturers rely on FDA regulations and guidance to ensure their labeling is not misleading, so it is unclear what additional rules or guidance they would need to consult. Such a ruling could also run counter to Congress' intent for uniform labeling across the states since

judges and juries could reach different conclusions on whether the same label is misleading. On the other hand, if the Supreme Court rejects compliance as necessary for Food, Drug and Cosmetic Act [2] (FDCA) preemption, that would fuel the argument that deference to FDA precludes lawsuits that are not directly based on FDA regulations. Such a ruling would likely curb the recent wave of food litigation. It is important to note that this does not change the fact that the FDCA expressly preempts certain state law mislabeling claims. The *Pom* case concerns a Lanham Act claim [3], and not state claims.

Q: Food labeling is highly contentious in recent years as claims regarding GMOs and "natural" ingredients are coming under scrutiny. Could we soon see cases of this nature on the Supreme Court docket?

A: It seems unlikely that the U.S. Supreme Court would want to weigh in on specific food labeling issues. The *Pom* case raises the broader question of how to reconcile a potential conflict between two federal statutes. But there are a number of food misbranding lawsuits concerning GMOs and “natural” labels in state and district courts since FDA has not issued regulations on those topics. It is unclear whether a broad ruling regarding the interplay between the Lanham Act and the FDCA would have an impact on consumer class actions targeting labeling issues that are not covered by specific FDA regulations.

Q: It seems irregular that the Supreme Court would hear a case on food labeling brought against one manufacturer by another. What is special about this case and do you expect to see more?

A: The recent rise in food litigation has generally consisted of consumer class actions, and not competitor suits. The *Pom* case raises a unique issue because it concerns a potential conflict between two federal statutes — the FDCA and the Lanham Act — and the Supreme Court is interested in how that conflict can be reconciled. For example, the justices questioned whether the acts serve different purposes. Justice Ginsburg suggested that the FDCA is concerned with nutritional information and health claims, and not a competitor losing business due to alleged deception. The federal government, as *amicus curiae* [4], argued that FDA already takes into account consumer confusion in issuing regulations on food labeling.

Q: Which aspects of this case to food manufacturers need to be mindful of in terms of their product formulations, labeling and marketing?

A: We need to see how the Supreme Court ultimately rules, but the food industry will undoubtedly be watching this case closely. If the Court rules that compliance with FDA regulations does not protect companies from challenges to their labels, food manufacturers will need to reassess their labels and evaluate potential lawsuits. If compliance is not enough, then every aspect of the label may be open to dispute.

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