



News Release

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DRI Files Amicus Brief With Supreme Court in Food Labeling Case *Conflicting Laws at Issue in Pom Wonderful LLC v. The Coca-Cola Company*

CHICAGO – (April 9, 2014)—DRI – The Voice of the Defense Bar has filed an amicus brief with the Supreme Court in *Pom Wonderful LLC v. The Coca-Cola Company*. The case was brought against Coca-Cola as violating the provisions of the Lanham Act with respect to how Coca-Cola (1) named its product, and (2) labeled its product, that is, whether the size of certain words on the label should be altered.

The suit was brought under the Lanham Act, which is designed to combat false advertising of any product or service thereby protecting business entities against unfair competition. A plaintiff must allege an injury to a commercial interest in reputation or sales.

The Food, Drug, and Cosmetic Act (FDCA) likewise addresses false statements. But together with the Nutrition Labeling and Education Act (NLEA) it is directed toward consumer rather than commercial protection. Coca-Cola was in full compliance with the provisions of FDCA and NLEA. The question is whether a party can use the Lanham Act to challenge a product name and label specifically authorized and deemed “not misleading” by regulations duly issued by the U.S. Food and Drug Administration pursuant to the FDCA.

In its brief supporting Coca-Cola’s position, DRI agreed with the ruling of the Ninth Circuit Court that Pom’s Lanham Act claim was barred because the product labeling that is specifically authorized by the FDCA and implementing regulations issued by the FDA cannot be challenged as false or misleading under the general proscriptions of the Lanham Act. Once Congress and the FDA approve a label statement as accurate and non-misleading, a private party cannot contest that very statement or attempt to show that it is false or deceptive under another federal statute.

Co-authors of the DRI brief, Mary Massaron Ross and Josephine DeLorenzo of Plunkett Cooney in Bloomfield Hills, MI, are available for comment through the DRI communications department.

The full text of the brief can be found [here](#).

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