

The Lanham Act: How POM vs Coke Enabled Supplement Lawsuits

written by Mike Roberto | March 26, 2018

POM Wonderful v. Coca-Cola – What was the big deal?

So you heard that Hi-Tech Pharmaceuticals sued MusclePharm and Brad Pyatt over alleged amino acid spiking... or Nutrition Distribution LLC is suing IronMagLabs over “unfair competition”.

How can one supplement company sue another one over each others’ labels, when those allegations seem to be related to the FDA’s jurisdiction, and not that of civil courts?

The answer to that question lies in **The Lanham Act**, and an important 2014 Supreme Court Decision the entire consumables market space.



Nutrition facts labeling is a serious issue, recently made even *more serious*

We live in a world where no one can fully escape liability. Companies of all sizes are constantly getting sued for something, and as the numerous laws and regulations mount, so do the capabilities of the lawyers.

Every once in a while, there’s a game-changing legal case that’s relevant to the sports supplement industry, which is often *mistaken* to be unregulated. By reading the headline, you still might be asking how a juice company suing the global leader in sodapop is relevant here in the *supplement* industry.



Mark Glazier explains that supplement companies *are* regulated, despite 'common' opinion. And after reading this post, you'll understand how competitors and lawyers have another tool in their chest.

It turns out that this case has *everything* to do with the supplement industry, and affects every company that is selling consumable products in the U.S. marketplace.

When POM Wonderful decided to sue Coca-Cola, things escalated to the point where the United States Supreme Court had to decide how far civil laws could go, and essentially ruled that companies *can* sue competitors for misleading advertising, specifically under the *Lanham Act*.^[1]

POM Wonderful vs. Coca-Cola: A quick primer

It helps to give a quick background. The summary of the issue is that POM Wonderful (the company that makes those well-known, antioxidant-packed bottles of pomegranate juice) went after Coca-Cola for "deceptive labeling".

Coca-Cola-owned Minute Maid had a product it called a "blueberry pomegranate juice", and POM believed it was blatant false advertising, because Coca-Cola's drink contained *only* 0.5% pomegranate and blueberry juice. Basically, POM believed Coca-Cola's "falsely advertised drink" was damaging POM's "properly and accurately" advertised product, which had more active pomegranate constituents.



In 2014, we captioned this image with "The supreme court recently ruled that Pom Wonderful may sue Coca-Cola, their competitor, for anti-competitive label claims. Will that decision affect the supplement industry?" –

The answer to that question was clearly YES.

After a long-drawn out legal battle spanning the greater part of a decade, two things happened:

1. The United States Supreme Court ruled that **POM was allowed to pursue a legal suit against Coca-Cola under the Lanham Act,**
2. POM Wonderful ultimately lost their suit multiple times in the 9th Circuit court of appeals.[2,3]

POM Wonderful ultimately lost, but they won the *ability* for these civil suits

It's the *first* of those two points that matters to everyone with a consumable product bearing a nutrition label. This case blew off the door to allow supplement companies (and any other type of food/nutrition/supplement company) to sue competing companies for deceptive and misleading labeling on their products – *if* it legitimately interferes with the company's interests.

Here's an example:



The image shows a legal document cover with a large, diagonal red stamp that reads "REVERSED AND REMANDED". The text on the document includes:

NUTRITION DISTRIBUTION, LLC, an Arizona Limited Liability Company, Plaintiff-Appellant, No. 16-55632
D.C. No. 2:15-cv-02337

SARMS Lawsuit Update:

IRONMAG LABS, LLC, a Nevada Limited Liability Company; ROBERT J. AGOSTINI, an individual; IRONMAG LABS, INC., a Nevada Limited Liability Company, Defendants-Appellees.

MEMORANDUM

Appeal from the United States District Court for the Central District of California
Honorable Judge [Name] Residing Judge

Submitted December 6, 2017
Pasadena, California

Nutrition Distribution vs. IronMagLabs has gotten crazy, and their Enhanced Athlete lawsuit has gotten even crazier. Now that the FDA has weighed in, the appeals court is allowing Nutrition Distribution restrictions to try this one again, but with some restrictions

Imagine that Supplement Company A makes a protein product and then one year later, Supplement Company B makes a similar protein product. If Supplement Company A's product would be diluted because Supplement Company B's product is falsely advertised, deceptive, or mislabeled, and therefore Supplement B's company would confuse consumers about Supplement Company A's product, then the Supreme Court has decided that Company A could sue Company B.

What is The Lanham Act?

The *Lanham Act* has been around for over seventy years. In this instance, it protects product owners and companies against false advertising that could harm the reputation of its own product.[4]

The provision POM relied on allows one competitor to sue another if it alleges unfair competition arising from false or misleading product descriptions.[1] The entire point of the act is to make deceptive practices of using marks be punishable.

What Went Down With POM and Coca-Cola

Basically, POM sued Coca-Cola under this piece of legislation, because it believed Coke's "Pomegranate Blueberry" flavored drink was misleading consumers and that Coke's "misleading" drink would ultimately affect the public perception of POM's juice in a negative light.[1] (Coca-Cola's drink contained only 0.5% pomegranate and blueberry juice and so it was argued that this product, potentially being less "effective", would damage the entire 100% pomegranate juice market).

Simple enough, right? It seemed that way.

At first, the 9th Circuit Court of Appeals said that the Lanham Act could *not* be used in this capacity, as they argued that labeling concerns were under the FDA's purview.[2] However, POM appealed up to the United States Supreme Court, who then *reversed* that part of the decision, and ruled POM *could* in fact sue Coca-Cola for misleading advertising – *specifically* under the Lanham Act.[1]

Don't say we didn't warn you!

As a bit of a hat tip to ourselves, PricePLOW saw this coming. Check out our "[Top 10 Supplement News Stories of 2014](#)" and see the part about "POM vs Coke" mentioned in the #1 most important item regarding the amino acid spiking lawsuits!

Essentially, win or lose (and POM did indeed end up losing), the SCOTUS decision set precedent for other companies to sue competitors for those same kinds of reasons.

Open season? In the litigious supplement industry... of course!

This means open season for any company who wants to bring a lawsuit against another company for false advertising, deceptive claims, or inaccurate labels. What makes this ruling so significant, is that now companies and manufactures in an unregulated industry can sue others for false advertising!

We can think of plenty of supplement companies who had been licking their chops to get some similar lawsuits filed against other companies – and many of these cases are still going on, and only getting crazier and crazier (stay tuned for the entire story on the Enhanced Athlete situation).

POM's Victory Has Far Reaching Impacts



RIP Antonin

So in *POM v. Coca-Cola*, the Supreme Court remanded the case back down to the 9th Circuit Court of Appeals in 2014.[1] This means that the case went back to the original court and was essentially re-tried, only this time, the original court had to allow POM to proceed with its suit under the *Lanham Act* (Coke argued from the get-go that POM couldn't sue under the *Lanham Act*, so that was the issue went all the way up to SCOTUS)

Fast forward to March 2016 when the suit was retried, a jury determined that Coke's juice was acceptable, even under the *Lanham Act*. [3] A bummer for POM, but it still won a monumental battle on behalf of the food and beverage industries.

The 2016 decision doesn't really matter to most of us, but the 2014 SCOTUS one *does* – POM's fight established other companies ability to bring civil suit against competing companies under the *Lanham Act*.

What Does This Mean For The Supplement Industry?

Depending on how you look at it, the *POM v. Coca-Cola* decision is a major win for many manufacturers in the food and beverage industry – and *definitely* a win for lawyers who now have another tool in their arsenal. The SCOTUS decision translates *directly* to the supplement industry, which is often argued to be particularly misleading regarding how some companies decide to advertise or label their products.



Considering lawsuits are commonly brought by competitors, the SCOTUS ruling in *POM v. Coca-Cola* will give companies and manufacturers the ability to legally “call out” competitors who may be mislabeling products or false advertising.

Amino spiking, dangerous ingredients, false claims of effectiveness, companies who aren’t lab testing their raw materials, etc... the list goes on. In order to win, the accusers will need a leg to stand and *prove that they have been harmed in some way*, but the floodgates are officially open and it did not surprise us to see a flux of lawsuits.

On the other end, companies have *lost* some protection by the *POM v. Coca-Cola* outcomes. The United States Supreme Court has set precedent that a similar claim (such as POM’s against Coca-Cola) will be sustainable under the *Lanham Act* – so something that was once considered to be only under the FDA’s jurisdiction can now be tried in civil court.

The lawyers are watching: Better check that label and lab test that lot

We’ve always lived in a war of words between supplement companies. But now, when it comes to actual claims on the label, competitors (and their lawyers) have an extra tool in the chest, and it’s pretty clear they’re willing to use it.



You better watch out... stay tuned for *this* article coming soon

This means that all companies need to proceed with extreme caution moving forward, especially if they manufacture a supplement with vague or misleading content claims, or don't bother to lab test their supplements, as we see occasionally from "time to time". Because any false labeling or false advertising will have potentially severe consequences, and there are lawyers and companies just waiting to strike.

The cycle never ends and likely never will. In the meantime, we as the consumers get to sit back and enjoy the fireworks, and pray that this ends up cleaning up the industry and not debilitating it.

References

1. *POM Wonderful, LLC. v. Coca-Cola Co.* 134 S.Ct. 2228, 189 L.Ed.2d 141 (2014). https://www.supremecourt.gov/opinions/13pdf/12-761_6k47.pdf
2. *POM Wonderful, LLC. v. Coca-Cola Co.*, 679 F.3d 1170 (2012); <https://www.leagle.com/decision/infco20120517171>
3. Tiffany Ikeda and James S. Blackburn; Arnold & Porter Kaye Scholer LLP; "Coca-Cola Defeats POM Wonderful's Misleading Labeling Claims: A Key Takeaway For Food and Beverage Manufacturers"; March 25, 2016; <https://www.lexology.com/library/detail.aspx?g=e441f0dd-34eb-4183-864b-b7dee87f978f>
4. *Wex Legal Dictionary, The Lanham Act.* https://www.law.cornell.edu/wex/lanham_act

All PricePLOW blog posts mentioning The Lanham Act:

- IronMagLabs Lawsuit Dismissal REVERSED, Case Re-Opened (2019 Update: DiMaggio Guilty in Other Case) Posted on: November 20, 2019
- How to Avoid False Advertising Lawsuits in the Food & Supplementation Industry Posted on: July 20, 2019
- The Lanham Act: How POM vs Coke Enabled Supplement Lawsuits Posted on: March 26, 2018
- Brad Pyatt Named in MusclePharm Amino Acid Spiking Lawsuit (SETTLED) Posted on: December 14, 2016
- Body Fortress LAWSUIT: Amino Acid Spiking Class Action UPDATED Posted on: November 30, 2016
- The 2016 FDA NDI Draft Guidance Document: How To Destroy The ENTIRE Dietary Supplement Industry in 102 Pages Posted on: September 14, 2016
- RICO Case Filed Against IronMagLabs by Hi-Tech Pharma Posted on: November 10, 2015