

## *False Advertising Claims against Product Names and Labels*

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False advertising claims under the Lanham Act may arise from a number of activities other than traditional advertising. Because Congress did not define any of the key terms in the false advertising provision, the question whether a particular “claim” constitutes “advertising” that is “false” has been left to the courts. In attempting to give meaning to these terms, courts distinguish between claims that are explicitly and implicitly false, impose different requirements of proof for each type of false claim, and allow a certain amount of leeway for “puffery” or patently implausible representations. Yet there are no clear lines distinguishing these categories, and no safe harbors.

The Supreme Court reaffirmed the absence of safe harbors in *Pom Wonderful LLC v. Coca Cola Co.*, where it held that a product name or label that complies with federal food and drug regulations may still be misleading under the Lanham Act. Even if the Court’s decision is correct as a matter of policy as well as statutory interpretation, it creates a new realm of uncertainty for manufacturers and trademark owners.

False advertising claims arising from food and beverage labeling have dramatically increased in recent years. Because FDA regulations are no longer a safe harbor against federal false advertising claims, Pom Wonderful creates uncertainty with respect to what constitutes false advertising with respect to product names and labels applied to food, beverages, and other products regulated by the FDA. This may lead to increased false advertising litigation under the Lanham Act. In addition, because the scope of FDCA preemption of state laws is unsettled, the Pom Wonderful decision may encourage more litigation under state false advertising and unfair competition laws; unlike the Lanham Act, these actions can be brought by consumers, and often take the form of a class action.

This article examines the application of false advertising laws to product names and labels, and the conflicts that arise between the FDCA, the Lanham Act, and state consumer protection laws.