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***POM WONDERFUL v. COCA-COLA* AND THE
IMPLICATIONS OF GRANTING
COMPETITORS THE RIGHT TO CHALLENGE
FALSE OR MISLEADING FOOD AND
BEVERAGE LABELS UNDER THE
LANHAM ACT**

*Matthew Busch**

I. INTRODUCTION

In *POM Wonderful LLC v. Coca-Cola Co.*,¹ the United States Supreme Court unanimously decided that the Federal Food, Drug, and Cosmetic Act (FDCA) does not preclude Lanham Act suits between competitors challenging false or misleading food and beverage labeling.² This ruling means that food and beverage makers do not have to rely exclusively on the United States Food and Drug Administration (FDA) to bring enforcement actions against competitors engaged in false advertising.³ *POM Wonderful* instead allows for a private right of action, empowering food and beverage makers to bring suit against companies whose false or misleading labels cause competitive injury.⁴

This Comment examines *POM Wonderful* in detail, approving of its result, while pointing out questions left unanswered due to the Court's limited holding. Part II of the Comment provides background on the statutory and regulatory framework underlying the Lanham Act and the FDCA. Part III lays out the relevant factual and

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1. 134 S. Ct. 2228 (2014).

2. *Id.* at 2241.

3. *See id.* at 2239; Brief for the United States as Amicus Curiae Supporting Neither Party at 27, *POM Wonderful*, 134 S. Ct. 2228 (No. 12-761), 2014 WL 827980, at *27.

4. 15 U.S.C. § 1125(a) (2012); *POM Wonderful*, 134 S. Ct. at 2238.

procedural background that led to the Court's decision. Part IV discusses the Court's justification for why the Lanham Act and the FDCA are complementary. Part V analyzes the following questions raised by the case: Will the decision have any effect on consumer-driven false-advertising suits? Will courts apply *POM Wonderful* beyond food and beverage labeling? Is the Supreme Court wary of the primacy of federal administrative agencies? Finally, Part VI answers these questions and concludes that allowing competitor-versus-competitor false-advertising suits will give companies greater power to police their own markets and prevent competitors from gaining advantages through use of false or misleading labeling.

II. THE STATUTORY AND REGULATORY FRAMEWORK

A. *The Lanham Act*

In 1946, Congress enacted the Lanham Act to make actionable the deceptive and misleading use of trademarks, to protect against unfair competition, and to prevent fraudulent reproduction of registered trademarks.⁵ While the Lanham Act's trademark provisions are the primary means of safeguarding against unfair competition, the Act also creates a federal remedy "that goes beyond trademark protection."⁶ Further, the Lanham Act creates a cause of action for unfair competition through misleading advertising or labeling.⁷ The Act allows one competitor to sue another if, "in commercial advertising or promotion," a competitor "misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities."⁸

B. *The FDCA*

Enacted in 1938, the FDCA gives the FDA authority to protect public health and safety through the regulation of food, drugs, and

5. Lanham (Trademark) Act, Pub. L. No. 79-489, 60 Stat. 427 (1946) (current version at 15 U.S.C. § 1127).

6. *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23, 29 (2003).

7. *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1395 (2014).

8. 15 U.S.C. § 1125(a)(1)(B).

cosmetics.⁹ In this capacity, the FDCA prohibits the false or misleading labeling of food and beverages.¹⁰ If the FDA determines that a particular food or drink label is false or misleading, it has the power to issue warning letters requesting that the product manufacturer take corrective action.¹¹ In addition, if a false or misleading food or beverage label “presents a risk of illness or injury or gross consumer deception,” the FDA may request that the manufacturer recall the product.¹² Food and beverage labels, however, are not regulated to the same extent as other product labels under the FDCA’s purview, namely drug labels.¹³ While the FDA preapproves drug labels prior to sale,¹⁴ it does not preapprove juice labels under its regulations.¹⁵

By its terms, the FDCA does not provide for a private right of action.¹⁶ Accordingly, prior to *POM Wonderful*, a food and beverage manufacturer injured by a competitor’s misbranding was at the mercy of the FDA.¹⁷ An injured competitor could only rely on FDA enforcement if the agency, at its own discretion, determined that the mislabeled food or drink adversely impacted public health or safety.¹⁸

III. STATEMENT OF THE CASE

POM Wonderful LLC (“POM”) produces, markets, and sells POM WONDERFUL brand bottled pomegranate juice and various pomegranate juice blends.¹⁹ The Coca-Cola Company (“Coca-Cola”), under its Minute Maid family of products, makes a competing juice blend with a label that displays the words “pomegranate blueberry” far more prominently than other words on

9. Federal Food, Drug, and Cosmetic Act, Pub. L. No. 75-717, 52 Stat. 1040 (1938) (codified at 21 U.S.C. §§ 301–399(f) (2012)); see *62 Cases of Jam v. United States*, 340 U.S. 593, 596 (1951).

10. 21 U.S.C. § 343(a).

11. See *id.* § 336.

12. 21 C.F.R. § 7.45(a) (2014).

13. See 21 U.S.C. § 355.

14. See *id.* § 355(d).

15. *POM Wonderful LLC v. Coca-Cola Co.*, 134 S. Ct. 2228, 2235 (2014).

16. 21 U.S.C. § 337.

17. See *id.*

18. See *Heckler v. Chaney*, 470 U.S. 821, 837–38 (1985).

19. *POM Wonderful*, 134 S. Ct. at 2233.

the label.²⁰ In truth, Coca-Cola's product only contains 0.3 percent pomegranate juice and 0.2 percent blueberry juice.²¹

Claiming that Coca-Cola's use of the label is deceptive and misleading, POM brought suit under the Lanham Act's false-advertising provision.²² According to POM, because Coca-Cola's product only contains trace amounts of pomegranate and blueberry juices, Coca-Cola can charge less for its beverage than its competitors can charge for theirs.²³ POM argued that because consumers invariably select cheaper products believed to be of the same quality, Coca-Cola unfairly diverts business from POM and other competitors in the pomegranate-blueberry juice market.²⁴

Nevertheless, the district court granted partial summary judgment to Coca-Cola, holding that the FDCA and its regulations preclude challenges to the naming and labeling of Coca-Cola's juice blend.²⁵ The court reasoned that "[t]he FDA has directly spoken on the issues that form the basis of Pom's Lanham Act claim" and has ruled that the Coca-Cola label is acceptable "even if pomegranate and/or blueberry are merely characteristic, rather than primary juices in the [j]juice."²⁶

The Court of Appeals for the Ninth Circuit affirmed, holding that Congress had "entrust[ed] matters of juice beverage labeling to the FDA," and it did not want to "risk undercutting the FDA's expert judgments and authority."²⁷

IV. REASONING OF THE COURT

In an 8–0 decision, the Supreme Court reversed the Ninth Circuit's ruling and held that "the FDCA and the Lanham Act complement each other in the federal regulation of misleading

20. *Id.*

21. *Id.*

22. *Id.*; 15 U.S.C. § 1125(a)(1)(B) (2012).

23. First Amended Complaint for False Advertising at 7, *Pom Wonderful LLC v. Coca Cola Co.*, No. CV 08-06237 SJO (FMOx), 2013 WL 543361 (C.D. Cal. Feb. 13, 2013), 2009 WL 2913255.

24. *Id.*

25. *POM Wonderful*, 134 S. Ct. at 2235–36.

26. *Pom Wonderful LLC v. Coca Cola Co.*, 727 F. Supp. 2d 849, 871–73 (C.D. Cal. 2010), *rev'd*, 679 F.3d 1170 (9th Cir. 2012), *rev'd*, *POM Wonderful*, 134 S. Ct. 2228.

27. *Pom Wonderful LLC v. Coca-Cola Co.*, 679 F.3d 1170, 1177–78 (9th Cir. 2012), *rev'd*, *POM Wonderful*, 134 S. Ct. 2228.

labels.”²⁸ As a preliminary matter, the Court narrowed the scope of its decision by explaining that *POM Wonderful* is not a preemption case, in which the question would be whether a federal statute supersedes a state law.²⁹ Instead, the Court recognized that *POM Wonderful* is a statutory interpretation case involving the “intersection and complementarity” of two statutory regimes, the Lanham Act and the FDCA.³⁰

POM argued that the preclusion analysis “concern[ed] whether one statute, the FDCA as amended, is an ‘implied repeal’ in part of another statute, *i.e.*, the Lanham Act.”³¹ According to POM, the Court must give full effect to both statutes unless they were in “irreconcilable conflict,” and Coca-Cola failed to satisfy this high standard.³² By contrast, Coca-Cola argued that “the case concern[ed] whether a more specific law, the FDCA, clarifies or narrows the scope of a more general law, the Lanham Act.”³³ Ignoring both of these “competing maxims,” the Court held that “the FDCA and the Lanham Act are complementary and have separate scopes and purposes.”³⁴ While “the Lanham Act protects commercial interests against unfair competition,” the Court stressed that the FDCA is limited to “protect[ing] public health and safety.”³⁵

The Court supported its conclusion that the FDCA and the Lanham Act are complementary by first interpreting the two statutes’ text.³⁶ By its terms, the Nutrition Labeling and Education Act (NLEA), a 1990 amendment to the FDCA, includes an express preemption provision and does not contain any preclusion language preventing another federal law from regulating food and beverage labeling.³⁷ According to the Court, Congress’s omission of a preclusion provision serves as “powerful evidence that Congress did

28. Justice Breyer took no part in the consideration of this case. *POM Wonderful*, 134 S. Ct. at 2241.

29. *Id.* at 2236.

30. *Id.* at 2233.

31. *Id.* at 2236–37.

32. *Id.* at 2237.

33. *Id.*

34. *Id.* at 2236, 2240.

35. *Id.* at 2238.

36. *Id.* at 2237.

37. *Id.*

not intend FDA oversight to be the exclusive means of ensuring proper food and beverage labeling.”³⁸

Next, the Court examined the complementary nature of the remedies offered by both statutes.³⁹ The Court explained that enforcement of the FDCA is largely committed to the FDA, which “does not have the same perspective or expertise in assessing market dynamics that day-to-day consumers possess.”⁴⁰ By contrast, the Court recognized that unlike agency rulemakers, competitors are uniquely positioned to assess sales and marketing data.⁴¹ And, because Lanham Act suits serve a distinct compensatory function, the Court reasoned that allowing for a private right of action would incentivize manufacturers to “behave well.”⁴²

Finally, the Court explained that allowing the FDCA to preclude Lanham Act claims challenging food and beverage labels would contravene Congress’s intent.⁴³ Unlike drug labels, food and beverage labels are not subject to FDA preapproval, and instead the FDA relies on enforcement actions and warning letters to police these types of labels.⁴⁴ According to the Court, “if Lanham Act claims were to be precluded then commercial interests—and indirectly the public at large—could be left with less effective protection in the food and beverage labeling realm than in many other, less regulated industries.”⁴⁵ The FDCA’s failure to adequately safeguard competitors’ commercial interests influenced the Court’s belief that Congress did not intend for there to be less policing of food and beverage labels than of other products’ labels in competitive markets.⁴⁶

For these reasons, the Court reversed the Ninth Circuit, holding that the FDCA is not “a ceiling on the regulation of food and beverage labeling” and noting instead that the Lanham Act and the FDCA are complementary in the federal regulation of misleading labels.⁴⁷ Additionally, the Court noted that “Lanham Act actions are

38. *Id.* (internal quotation marks omitted).

39. *Id.* at 2238.

40. *Id.*

41. *Id.*

42. *Id.* at 2238–39.

43. *Id.* at 2239.

44. *Id.*

45. *Id.*

46. *See id.*

47. *Id.* at 2240.

a means to implement a uniform policy to prevent unfair competition in all covered markets.”⁴⁸ Consequently, the Court decided that Coca-Cola’s argument that Lanham Act food labeling claims would undermine national uniformity was without merit.⁴⁹

V. ANALYSIS

The Court correctly decided that competitors may bring Lanham Act claims challenging food and beverage labels regulated by the FDCA. Allowing for a federal private right of action will empower companies to bring suit against competitors whose false or misleading labels cause competitive injury. Before the *POM Wonderful* decision, FDA warning letters and the threat of administrative enforcement actions proved insufficient remedies to companies suffering economic loss attributable to competitors’ false or misleading labels. But, in the wake of *POM Wonderful*, companies may obtain the same remedy available to consumers under state consumer protection statutes, an injunction requiring a product label change.⁵⁰

Even though *POM Wonderful* was fundamentally correct, the Court’s ruling still raises questions: Will the decision have any effect on consumer-driven false-advertising suits? Will courts extend the ruling beyond the scope of food and beverage labeling? Finally, does the decision reflect the Supreme Court’s wariness of the long-standing dominance of federal administrative agencies? These questions are addressed in the sections that follow.

A. *POM Wonderful’s Impact on Consumer-Driven False-Advertising Suits*

The *POM Wonderful* Court explicitly narrowed the scope of its inquiry to the interplay between two federal statutes when it explained that this case was “not a pre-emption case.”⁵¹ Consequently, the decision did not address the feasibility of

48. *Id.*

49. *See id.*

50. Adam M. Reich et al., *POM Wonderful LLC v. Coca Cola Company: Have the Tides Turned in the Legal Food Fight?*, LEXOLOGY (July 1, 2014), <http://www.lexology.com/library/detail.aspx?g=dc012e3-2fdf-4eed-9ef7-9ad4c1de383e> (citing CAL. BUS. & PROF. CODE § 17200 (West 2014)).

51. *POM Wonderful*, 134 S. Ct. at 2236.

traditional defenses to consumer class actions challenging food and beverage labels.⁵²

With respect to preemption, the *POM Wonderful* Court acknowledged that the NLEA, the FDCA's 1990 amendment, has a preemption provision that expressly forbids "a State . . . from imposing requirements that are . . . not identical to corresponding FDCA requirements for food and beverage labeling."⁵³ Accordingly, courts generally find that the NLEA preempts state law food and beverage labeling claims in which the disputed label has been specifically addressed by, and conforms to, existing FDA regulations.⁵⁴ Because the *POM Wonderful* Court explicitly stated it would not address preemption, the preemption defense remains a severe hurdle to class action plaintiffs seeking to invoke state consumer protection laws.⁵⁵

Similarly, the primary jurisdiction doctrine remains a cognizable defense in the wake of *POM Wonderful*.⁵⁶ "The primary jurisdiction doctrine allows courts to stay proceedings or to dismiss a complaint without prejudice pending the resolution of an issue within the special competence of an administrative agency."⁵⁷ In other words, primary jurisdiction enables a court to determine that an otherwise valid claim "implicates technical and policy questions that should be addressed in the first instance by the agency with regulatory authority over the relevant industry rather than by the judicial branch."⁵⁸

For example, in *Saubers v. Kashi Co.*,⁵⁹ class action plaintiffs brought state law claims against Kashi arguing that its food products

52. Reich et al., *supra* note 50.

53. 21 U.S.C. § 343-1 (2012); *POM Wonderful*, 134 S. Ct. at 2238 (internal quotation marks omitted).

54. See, e.g., *Young v. Johnson & Johnson*, 525 F. App'x 179, 185 (3d Cir. 2013) ("Because [plaintiff's] state law action seeks to impose [cholesterol labeling] standards that are not identical to those set forth in the [FDA's] regulations, it is expressly preempted by the NLEA as it relates to those claims."); *Carrera v. Dreyer's Grand Ice Cream, Inc.*, 475 F. App'x 113, 115 (9th Cir. 2012) (holding that claims that an ice cream manufacturer violated California consumer protection laws by stating that its product contained "0g Trans Fat" were expressly preempted by the NLEA, which permits products containing less than 0.5 grams of trans fat per serving to express this amount as zero).

55. See Reich et al., *supra* note 50.

56. *Id.*

57. *Clark v. Time Warner Cable*, 523 F.3d 1110, 1114 (9th Cir. 2008).

58. *Id.*

59. No. 13CV899 JLS (BLM), 2014 WL 3908595 (S.D. Cal. Aug. 11, 2014).

were “misbranded.”⁶⁰ According to the plaintiffs, Kashi’s use of the term “evaporated cane juice” on its labels was false and misleading because evaporated cane juice is merely ordinary sugar.⁶¹ Because the FDA was still waiting on public comments before it finalized rules pertaining to evaporated cane juice, the court held that the primary jurisdiction doctrine warranted dismissal of the plaintiffs’ claims.⁶²

Nevertheless, the *Saubers* plaintiffs attempted to argue that *POM Wonderful* stands for the general proposition “that courts need not defer to the FDA’s expertise in suits over deceptive or misleading food labeling.”⁶³

The *Saubers* court found this argument unconvincing, and instead correctly recognized that *POM Wonderful* stands exclusively for the proposition that the FDCA does not preclude Lanham Act false or misleading advertising claims brought by competitors.⁶⁴

Accordingly, *POM Wonderful* does not ensure the continued viability of consumer-driven class actions for false or misleading labels. As the *POM Wonderful* Court acknowledged, its decision did not challenge the preemption defense’s validity.⁶⁵ Moreover, as *Saubers* correctly illustrates, *POM Wonderful* did not eliminate the use of primary jurisdiction as a defense to consumer-driven false-labeling actions.⁶⁶

And, even if *POM Wonderful* does not by itself result in a reduction in consumer-driven labeling litigation, the Supreme Court’s decision in *Comcast Corp. v. Behrend*⁶⁷ significantly limits consumers’ ability to attain class certification in labeling cases.⁶⁸ In that case, the Court held that consumers seeking class certification must establish that damages are capable of measurement on a classwide basis.⁶⁹ Applying *Comcast Corp.* to a beverage-labeling class action, Judge Dean Pregerson of the Central District of California noted that class certification is not feasible “[i]n situations

60. *Id.* at *1 (internal quotation marks omitted).

61. *Id.*

62. *Id.* at *3.

63. *Id.* at *4.

64. *Id.*

65. *POM Wonderful LLC v. Coca-Cola Co.*, 134 S. Ct. 2228, 2238 (2014).

66. *Saubers*, 2014 WL 3908595, at *4.

67. 133 S. Ct. 1426 (2013).

68. Reich et al., *supra* note 50.

69. *Comcast Corp.*, 133 S. Ct. at 1433.

where purported class members purchase an inexpensive product . . . and are unlikely to retain receipts or other transaction records.”⁷⁰ Consequently, it will be unsurprising if post-*POM Wonderful*, plaintiff’s attorneys cease filing consumer-based suits and instead focus more heavily on competitor-driven suits under the Lanham Act.⁷¹

*B. The Application of POM Wonderful
Beyond Food and Beverage Labeling*

In *POM Wonderful*, the Court made clear that its holding applied exclusively to food and beverage labels regulated by the FDCA.⁷² An open question, however, is whether lower courts will expand the *POM Wonderful* holding to cases beyond the scope of food and beverage labeling.⁷³ If district court cases decided after *POM Wonderful* are any indication, competitors may bring Lanham Act claims challenging product labels for a variety of products regulated by different federal administrative agencies.

For example, in *Catheter Connections, Inc. v. Ivera Medical Corp.*,⁷⁴ a medical device company sued a competitor under the Lanham Act for making false representations about an infection-control device’s functional aspects.⁷⁵ Recognizing that the plaintiff sought “to protect its interests in the market, just as *POM Wonderful* was doing in the case against Coca-Cola,” the *Catheter Connections* court held that the FDCA did not preclude certain Lanham Act claims.⁷⁶ In support of its holding, the court reasoned that FDA expertise is not required in examining “what drives buyers’ purchasing decisions.”⁷⁷

Similarly, in *Toddy Gear, Inc. v. Navarre Corp.*,⁷⁸ the court applied *POM Wonderful* in its analysis of the potential preclusive

70. *In re POM Wonderful LLC*, No. ML 10-02199 DDP (RZx), 2014 WL 1225184, at *6 (C.D. Cal. Mar. 25, 2014).

71. See Reich et al., *supra* note 50.

72. *POM Wonderful LLC v. Coca-Cola Co.*, 134 S. Ct. 2228, 2233 (2014).

73. Jessie F. Beeber & Sarah S. Park, *A Whole New Lanham Act? A Look at Lexmark and POM Wonderful in Action*, LEXOLOGY (July 15, 2014), <http://www.lexology.com/library/detail.aspx?g=4a933260-ca83-4be4-bfd9-4f2c1315f319>.

74. No. 2:14-CV-70-TC, 2014 WL 3536573 (D. Utah July 17, 2014).

75. *Id.* at *2.

76. *Id.* at *5–7.

77. *Id.* at *6.

78. No. 13 CV 8703, 2014 WL 4271631 (N.D. Ill. Aug. 26, 2014).

effect of the Textile Fiber Products Identification Act (TFPIA).⁷⁹ In that case, a maker of a microfiber cloth used for cleaning electronic devices brought a Lanham Act claim for false advertising against a competitor.⁸⁰ Like the FDCA at issue in *POM Wonderful*, the TFPIA provides exclusive enforcement authority to an administrative agency—the Federal Trade Commission in this case—to sanction companies engaged in false or misleading labeling.⁸¹ Holding that the TFPIA did not preclude a Lanham Act claim, the *Toddy Gear* court mirrored the *POM Wonderful* Court’s statutory interpretation analysis by arguing that the two statutes’ texts illustrate separate scopes and purposes.⁸²

Both *Catheter Connections* and *Toddy Gear* demonstrate that in the wake of *POM Wonderful*, courts will routinely disregard the preclusive effects of administrative statutes regulating a wide variety of products.⁸³ Consequently, there will likely be a proliferation of Lanham Act suits concerning goods over which administrative agencies have traditionally held exclusive enforcement authority. This outcome is consistent with *Lexmark International, Inc. v. Static Control Components, Inc.*,⁸⁴ which significantly relaxed the standing requirement to bring false-advertising claims under the Lanham Act.⁸⁵ Decided by the Supreme Court shortly before *POM Wonderful*, *Lexmark* held that a competitor need only plead an injury to a commercial interest proximately caused by a company’s misrepresentations to invoke the Lanham Act’s false-advertising cause of action.⁸⁶ Accordingly, following *POM Wonderful* and *Lexmark*, administrative-law preclusion will prove an ineffective roadblock to the likely expansion of Lanham Act false-advertising claims.⁸⁷

79. *Id.* at *2.

80. *Id.* at *1.

81. *Id.* at *2.

82. *See id.*

83. *See Catheter Connections, Inc. v. Ivera Med. Corp.*, No. 2:14-CV-70-TC, 2014 WL 3536573, at *5–7 (D. Utah July 17, 2014); *see also Toddy Gear, Inc.*, 2014 WL 4271631, at *2.

84. 134 S. Ct. 1377 (2014).

85. *Id.* at 1389.

86. *Id.* at 1395.

87. *See* John Duffy, *Opinion Analysis: The Triumph of the Lanham Act (and of Federal Private Rights of Action)*, SCOTUSBLOG (June 13, 2014, 5:22 PM), <http://www.scotusblog.com/2014/06/opinion-analysis-the-triumph-of-the-lanham-act-and-of-federal-private-rights-of-action/> (explaining “the Supreme Court’s increasingly ambivalent approach to administrative regulation”).

C. *POM Wonderful Is Reflective of the Supreme Court's Increasing Ambivalence Toward Administrative Regulation*

Aside from its effect on the false-advertising litigation landscape, *POM Wonderful* also demonstrates that the Supreme Court has grown increasingly wary of the primacy of federal administrative agencies.⁸⁸ Since the establishment of the administrative state, the Court has often cast administrative agencies in heroic terms,⁸⁹ they were thought to “render valuable and very necessary services in the solution of the complex governmental and economic problems of our time.”⁹⁰ Agency rulemakers’ specialized training and experience were considered an asset in determining policy in preparation for, or incidental to, administrative action.⁹¹ In holding that the FDA does not have the “expertise in assessing market dynamics that day-to-day consumers possess,” the *POM Wonderful* Court showed how little is left of that notion.⁹²

Although the Ninth Circuit barred POM’s Lanham Act claims out of concern that they might “undermine FDA authority,”⁹³ the Supreme Court was not concerned with that possibility because the Court recognized the limits of the FDA’s competence.⁹⁴ Competitors, the Court noted, “have detailed knowledge regarding how consumers rely upon certain sales and marketing strategies” and an “awareness of unfair competition practices [that] may be far more immediate and accurate than that of agency rulemakers and regulators.”⁹⁵

The Supreme Court’s concerns regarding administrative competence are not unique to the *POM Wonderful* decision. In fact, in a number of recent opinions, the Court has expressed deep hostility toward expansive administrative power.⁹⁶ For example, in *Free Enterprise Fund v. Public Accounting Oversight Board*,⁹⁷ the Court acknowledged “Congress’s power to create a vast and varied

88. *Id.*

89. *Id.*

90. *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501, 513 (1943) (Murphy, J., dissenting).

91. *Id.*

92. *POM Wonderful LLC v. Coca-Cola Co.*, 134 S. Ct. 2228, 2238 (2014); Duffy, *supra* note 87.

93. *Pom Wonderful LLC v. Coca-Cola Co.*, 679 F.3d 1170, 1176–78 (9th Cir. 2012), *rev'd*, *POM Wonderful*, 134 S. Ct. at 2238.

94. Duffy, *supra* note 87.

95. *POM Wonderful*, 134 S. Ct. at 2238.

96. Duffy, *supra* note 87.

97. 561 U.S. 477 (2010).

federal bureaucracy” and expressed concern that such growth “heightens the concern that [power] may slip from the Executive’s control, and thus from that of the people.”⁹⁸ Additionally, in *City of Arlington v. FCC*,⁹⁹ three Justices, in a dissenting opinion, reasoned that “[i]t would be a bit much to describe [agency rulemaking authority] as ‘the very definition of tyranny,’ but the danger posed by the growing power of the administrative state cannot be dismissed.”¹⁰⁰

It can therefore be inferred that much of the analysis in *POM Wonderful* reflects the Court’s recent skepticism concerning the regulatory scope and competency of agency enforcement.¹⁰¹ As a consequence, courts may follow *POM Wonderful* and look toward private rights of action as suitable substitutes for inadequate agency enforcement.¹⁰²

VI. CONCLUSION

POM Wonderful empowers companies to bring suit against competitors whose false or misleading labels cause competitive injury. Although this decision effectively safeguards competitors’ commercial interests, the holding also has broader implications. Because preemption, primary jurisdiction, and class certification challenges remain viable roadblocks preventing successful consumer class actions, it is likely that plaintiff’s lawyers will bring competitor-based Lanham Act suits with greater frequency.¹⁰³ Moreover, if lower court decisions interpreting *POM Wonderful* provide any guidance, the Court’s holding may apply to a wide array of product labeling cases aside from food and beverage labeling.¹⁰⁴ Finally, *POM Wonderful* may indicate that the Supreme Court will look to private rights of action instead of administrative regulations

98. *Id.* at 499.

99. 133 S. Ct. 1863 (2013).

100. *Id.* at 1879 (Roberts, C.J., dissenting) (citation omitted).

101. *See* *POM Wonderful LLC v. Coca-Cola Co.*, 134 S. Ct. 2228, 2238 (2014) (“The FDA, however, does not have the same perspective or expertise in assessing market dynamics that day-to-day competitors possess.”).

102. *See* Reply Brief for Petitioner-Appellant at 22, *POM Wonderful*, 134 S. Ct. 2228 (No. 12-761), 2014 WL 1410441, at *22 (arguing that the FDA lacks the resources to engage in any meaningful oversight of misleading food labels).

103. Reich et al., *supra* note 50.

104. Duffy, *supra* note 87.

because of the Court's growing concern over administrative agencies' unchecked power and questionable expertise.¹⁰⁵

105. See *POM Wonderful*, 134 S. Ct. at 2238; *City of Arlington*, 133 S. Ct. at 1879 (Roberts, C.J., dissenting).