



THINK FORWARD

Supreme Court Lexmark Decision Provides Guidance for Standing Analysis Under Lanham Act False Advertising Provisions

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On Tuesday, March 25, the Supreme Court issued its ruling in *Lexmark International Inc. v. Static Control Components, Inc.*, No. 12-874, resolving a circuit split on the Lanham Act's standing requirements for a false advertising cause of action. In a unanimous decision, the Court held that a cause of action extends to plaintiffs who fall "within the zone of interests" protected by the statute and whose injury was proximately caused by a violation of that statute. Under this test, the Court concluded that Static Control has properly alleged standing for a Lanham Act false advertising claim under 15 U.S.C. §1125(a).

In the case at issue, Lexmark sells toner cartridges that are designed to work only with its own laser printers. Static Control produces components, namely microchips, which enable third parties to refurbish and resell Lexmark's cartridges. Lexmark brought suit against Static Control, alleging that Static Control's microchips constituted a violation of the Copyright Act and Digital Millennium Copyright Act. Static Control counterclaimed with Lanham Act false advertising claims, alleging that Lexmark falsely advised its customers that it was illegal to use Static Control's components and that the customers are legally bound to return the toner cartridges to Lexmark. While the district court held that Static Control lacked "prudential standing" to bring the Lanham Act false advertising claim, the Sixth Circuit reversed. In reversing, the Sixth Circuit applied the Second Circuit's "reasonable interest" test to determine standing, in which a plaintiff has standing to bring a false advertising claim if it can demonstrate: 1) a reasonable interest to be protected against the alleged false advertising; and 2) a reasonable basis for believing that the interest is likely to be damaged by the alleged false advertising.

Other circuits, namely the Third, Fifth, Eighth, and Eleventh Circuits, all applied the antitrust standing or *Associated General Contractors* factors in evaluating Lanham Act false advertising standing, while the Seventh, Ninth, and Tenth Circuits only permitted false advertising suits by plaintiffs who are actual competitors of the defendant. This "direct competitor" test was the most defendant-friendly, as it restricted the set of plaintiffs most out of the three circuit tests.

In rejecting the various circuit tests, the Court's decision provides clear guidance on what constitutes standing in the Lanham Act false advertising context – guidance that eliminates variability by circuit. In order to properly allege that its injury falls within the "zone of interests," a plaintiff must allege injury to a commercial interest in reputation or sales. The plaintiff must also establish proximate cause, namely, that there is "economic or reputational injury flowing directly from the deception wrought by the defendant's advertising; and that that occurs when deception of consumers causes them to withhold trade from the plaintiff." Lastly, the Court's emphasis on "zone of interests" plus proximate causation eliminates the variability of the antitrust standing test, which promulgated them as factors to be weighted in balance, rather than prongs which must be both satisfied for standing.

If you have any questions about the Court's decision or how it may impact your business, please feel

free to contact one of our [trademark attorneys](#).