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Supreme Court Inks Uniform Standing Test for Lanham Act False Advertising Claims

Key Takeaways

1. The US Supreme Court created a uniform test for standing for false advertising claims under Section 43(a) of the Lanham Act, resolving a three-way circuit split.
2. The new standing test requires the plaintiff to allege and prove that it suffered an injury to a commercial interest in sales or business reputation, and that such injury was proximately caused by the defendant's alleged misrepresentations.
3. The Court closed the courthouse doors to consumer class action suits under Section 43(a), pointing to the commercial interest requirement.
4. The decision may prompt speculation regarding uncertainty as to standing for other claims under Section 43(a), including claims for infringement of unregistered trademarks.

Discussion of the Case

In a decision issued March 25, 2014, *Lexmark International, Inc. v. Static Control Components, Inc.*, the US Supreme Court rejected three conflicting tests for standing for false advertising claims under Section 43(a) of the Lanham Act, creating a new test in the process. Specifically, plaintiffs must now "plead (and ultimately prove) an injury to a commercial interest in sales or business reputation proximately caused by the defendant's misrepresentations."

Plaintiff Lexmark International, Inc. (Lexmark) sells laser printers and corresponding ink cartridges. The ink cartridges contain a microchip that deactivates them after they run out of ink, which is intended to stop "remanufacturers" from refurbishing and selling the ink cartridges in competition with Lexmark. Defendant Static Control Components, Inc. (Static Control), while not a direct competitor of Lexmark, sells component parts to remanufacturers, including a replacement microchip that allows the remanufacturers to once again refurbish and sell ink cartridges in competition with Lexmark. In response, Lexmark sent letters to the remanufacturers, advising that it was illegal to sell the refurbished ink cartridges and, in particular, that it was illegal to use Static Control's products to refurbish the ink cartridges.

Lexmark sued Static Control for copyright infringement based on its creation and sale of the microchips. Static Control counterclaimed for false advertising based on, among other things, the letters to the remanufacturers. The US District Court for the Eastern District of Kentucky dismissed Static Control's counterclaim for lack of "prudential standing," and the US Court of Appeals for the Sixth Circuit reversed.

The Supreme Court granted *certiorari* and ultimately held that Static Control satisfied the Court's new test for standing under Section 43(a) of the Lanham Act. In so holding, the Court swept aside what it called the "misleading" concept of "prudential standing," which has been applied by courts as an additional hurdle to alleging standing beyond the broad "case or controversy" requirement (i.e., an injury in fact that is fairly traceable to the conduct complained of) of Article III of the US Constitution. The Court held that standing simply flows from traditional statutory interpretation principles. In particular, courts need only look to the at-issue statute to determine (1) whether the plaintiff's alleged injury falls within the "zone of interest" protected by the statute, and if so, (2) whether such injury was proximately caused by the defendant's alleged misrepresentations.

The Court's new standing analysis falls somewhere in the middle of the three rejected tests: one, which conferred standing only on direct competitors of the defendant; the second, which used a multifactor analysis borrowed from antitrust law; and the third, which conferred standing on any plaintiff that demonstrated a "reasonable interest to be protected against" and a "reasonable basis for believing" that such interest was likely to be harmed.

Turning to the interpretation of the "zone of interest" protected by the Lanham Act, the Court looked to the statute's clear statement of intent in Section 45 regarding protection against "unfair competition." Citing to a law review article from 1929, the Court found that unfair competition "was generally understood to be concerned with injuries to business reputation and present and future sales." Thus, the Court concluded that the "zone of interest" of Section 43(a) was limited to injuries to a commercial interest in reputation or sales. The Court then slammed the courthouse doors on consumer class actions under Section 43(a), pointing out that this "zone of interest" excluded a suit based on a "consumer who is hoodwinked into purchasing a disappointing product."

On the facts at hand, the Court held that Static Control had sufficiently alleged lost sales and damage to its business reputation, easily satisfying the "zone of interest" requirement. Further, the Court found that Static Control's allegations sufficiently pled that those injuries were proximately caused by Lexmark's representations that Static Control's business was illegal. Accordingly, the Court held that Static Control had standing and was thus "entitled to a chance to prove its case."

While this decision provides some welcome certainty for false advertising litigants, ending the three-way circuit split regarding Section 43(a) false advertising standing, it also opens the door to speculation regarding standing for other "unfair competition" claims under Section 43(a) (e.g., infringement of unregistered trademarks). Specifically, the Court's holding and analysis were not expressly limited to Section 43(a)(1)(b), which relates to false advertising, but instead apply to all of Section 43(a). It is thus unclear whether, for example, some increased level of "proximate harm" will be required for trademark claims under Section 43(a). Then again, the Court's formulation of what constitutes proximate harm under Section 43(a)—when "deception of consumers causes them to withhold trade from the plaintiff"—seems to fit nicely with the "likelihood of consumer confusion" standard applied in trademark cases.

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