No. 12-761

IN THE

Supreme Court of the United States

POM WONDERFUL LLC,

Petitioner,

—v.—

THE COCA-COLA COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION

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The Coca-Cola Company ("Coca-Cola") respectfully submits this response to the petition of Pom Wonderful LLC ("Pom") for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit in this case.

QUESTION PRESENTED

Whether the Ninth Circuit correctly held that a private litigant cannot use the Lanham Act's general prohibition against "misleading" statements to challenge a product name and label specifically authorized, and deemed "not misleading," by regulations duly issued by the U.S. Food and Drug Administration pursuant to the Food, Drug and Cosmetic Act.

RULE 29.6 DISCLOSURE

The Coca-Cola Company certifies that it has no parent corporation and that no publicly held corporation owns 10% or more of its stock.

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INTRODUCTION

Pom's petition is built on an erroneous premise: that the Ninth Circuit held the Lanham Act inapplicable to any label regulated by the U.S. Food and Drug Administration ("FDA"). According to Pom, "the Ninth Circuit concluded that Pom's Lanham Act claim was barred simply because the FDA regulates Coca-Cola's label." Pet. at 18. Indeed, Pom asserts, the "court of appeals allowed the FDA's *mere authority to regulate* juice labeling to bar application of the Lanham Act to any label falling within that authority." *Id.* at 13 (emphasis in original).

That is simply not what the Ninth Circuit held, or even what the proceedings below were about. Rather, both the district court and the court of appeals reached the much narrower conclusion that product labeling that is *specifically authorized* by the Food, Drug and Cosmetic Act ("FDCA") and/or implementing regulations issued by the FDA cannot be challenged as "false or misleading" under the general proscriptions of the Lanham Act. In other words, once Congress and FDA consider and directly approve a label statement as accurate and non-misleading, a private party cannot contest that very statement, or attempt to show that it is or false or deceptive, under another federal statute.

This decision was manifestly correct and, indeed, was the only sensible ruling the court below could have made. No other federal court of appeals—and certainly no decision by this Court—has ever reached a different conclusion. Allowing litigants to assert the kinds of claims that Pom

advocates would not only undermine the regulatory scheme that Congress and FDA have put in place, but would squander the scarce governmental resources about which Pom professes to be concerned. Pom's petition should be denied, and the decision below permitted to stand.

STATEMENT OF THE CASE

Coca-Cola, through its Minute Maid® business unit, markets a "Pomegranate Blueberry Flavored Blend of 5 Juices"—a 100% juice product flavored with small amounts of pomegranate juice, blueberry juice, and other natural flavors that give the juice a pomegranate-blueberry taste.[1] Coca-Cola includes on the product label a prominent graphic or "vignette" that depicts all five fruits used in the blend (apples, grapes, pomegranates, blueberries and raspberries). By featuring this image and by calling the product a "Pomegranate Blueberry **Flavored** Blend of 5 Juices," Coca-Cola accurately tells consumers what the product is (a blend of identified fruit juices) and, most importantly, what it tastes like (pomegranate and blueberry).

Detailed FDA regulations that govern the naming and labeling of flavored juice blends expressly authorize Coca-Cola's name and label. Indeed, as part of the formal notice-and-comment rulemaking process that led to the adoption of the applicable rules, FDA specifically considered how manufacturers should label "blends or mixtures of several juices, with one or two juices present in only minor amounts giving them flavor." 58 Fed. Reg.

[1] Pom refers to the product by the incomplete shorthand "Pomegranate Blueberry."

2897 at 2919 (Jan. 6, 1993). FDA found with respect to such products that the terms "flavored" and "blend" (1) inform consumers that the named fruit juices provide the product's characterizing flavor, but (2) do not erroneously suggest that these juices predominate by volume. FDA thus determined that naming and labeling a flavored juice blend in precisely the manner that Coca-Cola did is appropriate and adequate "to ensure that the label" of such a product "is not misleading." *Id.*

Pom has never disputed that Coca-Cola's product name is *authorized* by FDA regulations, or that FDA has determined that labels such as Coca-Cola's are *not misleading*. Nevertheless, Pom sued Coca-Cola under the Lanham Act—a general statute that prohibits any "false or misleading description" of goods and allows "any person who believes that he or she is likely to be damaged" to sue. Both the district court and the Ninth Circuit refused to permit such a private assault on FDA's authority.

In granting Coca-Cola's motion for summary judgment, the district court conducted an exhaustive review of the FDA regulations that govern the naming and labeling of flavored juice blends, including the years-long rulemaking proceeding that led to the adoption of these rules. The court first recognized that FDA had, after careful deliberation, "concluded that manufacturers of multiple-juice beverages may identify their beverages with a non-primary, characteristic juice, as Coca-Cola does here." App. 62a.[2] The district court then

[2] "App." refers to the Appendix to Pom's petition.

determined that the "naming and labeling" of Coca-Cola's product "comply" with all of the "rules promulgated by the FDA . . . to protect the public from unsafe or mislabeled products." *Id.* (citing 21 C.F.R. §§ 102.33(c), (d)). In particular, the product's name—Pomegranate Blueberry Flavored Blend of 5 Juices—"adequately and appropriately identifies pomegranate and blueberry as merely characterizing flavors," and the words "flavored" and "blend" are displayed on the label with requisite prominence. *Id.* 64a, 67a (citing 21 U.S.C. § 343(f)). Thus, the court concluded, "FDA has directly spoken on the issues" and has "reached a determination as to what is permissible." *Id.* 62a. Because Pom's claim "impermissibly challeng[ed] the FDA's" rules for "labeling [ ] a multiple-juice beverage," *id.*, Pom was "precluded from pursuing its Lanham Act claim against the naming and labeling" of the product. *Id.* 65a.

The Ninth Circuit affirmed this ruling in all respects, concluding that the district court was "right to hold" that where, as here, FDA has specifically authorized the use of certain labeling statements, allowing a private litigant to challenge those statements under the Lanham Act would unacceptably "undermine the FDA's regulations and expert judgments." *Id.* 10a.[3] The Ninth

[3] The court of appeals vacated the district court's dismissal of Pom's state-law claims on standing grounds, and remanded the case for consideration whether those claims are expressly preempted by federal law and/or barred by the California safe harbor doctrine. On February 13, 2013, the district court granted Coca-Cola's renewed motion for summary judgment with respect to Pom's state-law claims and dismissed Pom's action, with prejudice, in its entirety. *See Pom Wonderful LLC v. The Coca-Cola Co.*, No. 08 Civ. 6237, at Dkt. No. 417 (filed Feb. 13, 2013).

Circuit conducted its own thorough analysis and concluded that "FDA regulations authorize the name Coca-Cola has chosen" for its pomegranate blueberry flavored juice blend. *Id.* 9a. In particular, the regulations specify that "(1) Coca-Cola may give its product a name that refers to juices that provide the characterizing flavor, and (2) those juices need not predominate by volume . . . ." *Id.* Therefore, "Pom's challenge to the name 'Pomegranate Blueberry Flavored Blend of 5 Juices' would create a conflict with FDA regulations and would require us to undermine the FDA's apparent determination that so naming the product is not misleading." *Id.*

With respect to Pom's contention regarding the relative type sizes in which the various components of Coca-Cola's product name are displayed, the Ninth Circuit noted that "the FDCA and its implementing regulations have identified" not only "the words and statements that must or may be included on labeling," but also "how prominently and conspicuously those words and statements must appear." *Id.* 10a (citing 21 U.S.C. § 343(f), (i); 21 C.F.R. § 102.33(c), (d)). The court continued:

> Congress and FDA have thus spoken to what content a label must bear, and the relative sizes in which the label must bear it, so as not to deceive. . . . FDA has not . . . required that all words in a juice blend's name appear on the label in the same size or that words hew to some other standard that Pom might have us impose. If the FDA thought such a regulation were necessary "to render [that information]

> likely to be read and understood by the ordinary individual," 21 U.S.C. § 343(f), it could have said so. . . . But . . . for a court to act when the FDA has not—despite regulating extensively in this area—would risk undercutting the FDA's expert judgments and authority.

Id. 10a-11a.

The Ninth Circuit concluded its opinion with an express admonition that it was *not* adopting the blanket rule that Pom asks this Court to review. The court cautioned that, in barring Pom's suit, "[w]e do not suggest that mere compliance with the FDCA or with FDA regulations will always (or will even generally) insulate a defendant from Lanham Act liability." *Id*. 12a. Rather, it was the FDA's "comprehensive regulation of [juice] labeling"—including the very matters raised by Pom's lawsuit—and the Agency's affirmative decision "not to impose the requirements urged by Pom" that led the court of appeals to affirm the judgment below. *Id*. In other words, Pom's Lanham Act challenge was barred not because Coca-Cola's label was merely subject to federal regulation, but because Congress and FDA had considered the issues and expressly "authorize[d]" Coca-Cola to label its product in the manner it did. *Id*. 9a.

REASONS FOR DENYING THE PETITION

I. THE NINTH CIRCUIT'S DECISION IS WELL-REASONED AND SUPPORTED BY PRIOR RULINGS BY OTHER COURTS

As the foregoing discussion demonstrates, Pom's repeated assertions that the decision below "precluded *all* Lanham Act claims touching on food and beverage labeling" (Pet. at 20 (emphasis in original)) are simply incorrect. No court, least of all the Ninth Circuit, has ever held the Lanham Act inapplicable to product labels simply because they are regulated in some fashion, or because FDA has the authority to regulate them. Rather, the court of appeals here had to grapple with a situation that has only arisen in a small number of cases: a private plaintiff attempts to use the general proscriptions of the Lanham Act to challenge a statement that FDA has specifically determined to be truthful and "not misleading." Though such cases are rare (because few litigants think to bring them), they are not unheard of, and they invariably fail.

For example, in *American Home Prods. v. Johnson & Johnson*, 672 F. Supp. 135 (S.D.N.Y. 1987), a drug maker alleged that its competitor's statements that its aspirin product was "SAFE" were false and misleading in light of the health risks that aspirin poses for certain populations. FDA, however, had already determined—based upon a careful review of the scientific literature—that aspirin could be marketed as "safe and effective," and had issued regulations to that effect. The court held that this determination by FDA precluded such a challenge, and that the manufac-

turer's "compliance with FDA" prescriptions was a "complete defense" to the competitor's Lanham Act claim. *Id.* at 144-45. *See also Cytyc Corp. v. Neuromedical Sys., Inc.*, 12 F. Supp. 2d 296, 301 (S.D.N.Y. 1998) (statements that FDA has approved are "non-actionable" under the Lanham Act since "they are neither false nor misleading" as a matter of law); *Rita Med. Sys. v. Resect Med., Inc.*, No. 05 Civ. 03291, 2006 U.S. Dist. LEXIS 52366, at *9 (N.D. Cal. July 17, 2006) ("FDA authorization casts doubt on the viability of plaintiff's Lanham Act claim"); *VP Racing Fuels, Inc. v. Gen. Petroleum Corp.*, 673 F. Supp. 2d 1073, 1084 (E.D. Cal. 2009) (Lanham Act cannot be used to "nullify the safe harbor" that exists under other federal laws); *Wyeth v. Sun Pharm. Indus., Ltd.*, No. 09 Civ. 11726, 2010 U.S. Dist. LEXIS 18180, at **11, 18 (E.D. Mich. Mar. 2, 2010) ("The FDA is a governmental agency, and its decisions" may be challenged administratively but not "under the Lanham Act").

The Ninth Circuit's decision in this case is in keeping with this long line of precedent, and it makes perfect sense. Both the FDCA and the Lanham Act prohibit false or misleading statements on food and beverage labels.[4] But of the two statutes, only the FDCA is a mandatory regulatory scheme that sets forth labeling rules that manufacturers are obliged to follow. FDA has pro-

[4] Section 403(a) of the FDCA, 21 U.S.C. § 343(a), states that a food is "misbranded" if, *inter alia*, its label is "false or misleading in any particular." Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), similarly prohibits any "false or misleading representation of fact . . . in commercial advertising or promotion . . . ."

mulgated highly-specific rules for hundreds of foods and beverages, from "beef stew" (must be 25% meat), *see* 9 C.F.R. § 319.304, to "peanut butter" (must be 90% peanuts), *see* 21 C.F.R. § 164.150. FDA has even directed manufacturers to make claims on their labels that are arguably false. For example, FDA rules specify that foods with fewer than five calories per serving should be labeled as "zero calories," *see* 21 C.F.R. § 101.60, and foods with less than 0.5 grams of trans fats per serving as "zero trans fats," *see* 21 C.F.R. § 101.9(c)(2)(ii). Manufacturers should not be exposed to lawsuits by competitors under the Lanham Act simply because they have adhered to these FDA prescriptions. The Ninth Circuit recognized as much when it ruled that Pom's attack on Coca-Cola's FDA-authorized label was barred.

II. THE NINTH CIRCUIT'S DECISION DOES NOT CONFLICT WITH THIS COURT'S PRECEDENTS

As noted above, this Court has never held that a Lanham Act claim will lie in circumstances where the statement in question has been directly authorized by a federal agency such as the FDA. Pom nonetheless argues that the Ninth Circuit's decision departs from this Court's precedents in two ways. Neither contention has merit.

A. THERE WAS NO NEED TO APPLY THE IRRECONCILABLE CONFLICT STANDARD

First, relying on its misreading of the decision below, Pom asserts that, by holding the Lanham Act inapplicable to food and beverage labeling, the Ninth Circuit violated this Court's precedents that require that two overlapping federal statutes both be given effect, and neither construed to displace the other, unless they are in "irreconcilable conflict." This Court has indeed held that a later-enacted statute will not be construed to silently repeal an earlier one unless the statutes cannot be reconciled. *See, e.g., Morton v. Mancari*, 417 U.S. 535 (1974); *Branch v. Smith*, 538 U.S. 254 (2003). But these decisions have nothing to do with the ruling in this case. As detailed above, the court of appeals did not hold that the Lanham Act is inapplicable to food labeling, let alone that the FDCA had repealed (or even partially repealed) the Lanham Act. Rather, the court below did precisely what is was supposed to do and reconciled the two statutes, holding that the FDA's specific determination, pursuant to the FDCA, that juice labels like Coca-Cola's are not misleading precludes a private party from advancing the opposite position in a private lawsuit under the Lanham Act. Put differently, the court ruled that a statement expressly approved by the FDCA is not "false or misleading" under the Lanham Act as a matter of law. *See Cytyc*, 12 F. Supp. 2d at 301.

That ruling is hardly controversial. It is a basic tenet of statutory construction that specific provisions trump general ones. *RedLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065, 2071

(2012); *see VP Racing*, 673 F. Supp. 2d at 1084 (general prohibitions against false and misleading statements "are not capable of co-existence" with a "more specific" regulation on point). The FDCA and its implementing regulations are more specific than the Lanham Act and expressly authorize Coca-Cola's name and label. Indeed, FDA rules state explicitly that it is "not misleading" to name a "multiple-juice beverage" for the juice(s) that provide the product's characterizing flavor (*e.g.*, pomegranate and blueberry)—even if those juices are "present in only minor amounts." 58 Fed. Reg. 2897 at 2919. These highly-specific prescriptions of the FDCA must control over the Lanham Act's general prohibition against "misleading" statements.

This conclusion is buttressed by the fact that the pertinent provisions of the FDCA post-date the Lanham Act.[5] As this Court has held:

> The classic judicial task of reconciling many laws enacted over time, and getting them to make sense in combination, necessarily assumes that the implications of a statute may be altered by the implications of a later statute. This is particularly so where the scope of the earlier statute is broad but the subsequent statutes more specifically address the topic at hand. . . . [A] specific policy embodied in a later federal statute should control our construction of the [earlier]

[5] As explained in Section II.B. *infra*, the relevant provisions of the FDCA were enacted in 1990 as part of the Nutritional Labeling and Education Act. The Lanham Act was enacted in 1946, and last amended in 1988.

> statute, even though it has not been expressly amended.

Food and Drug Admin. v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 143 (2000) (quotations and citations omitted). This teaching fully supports the court of appeals' conclusion that the general proscriptions of the Lanham Act cannot be used to challenge statements expressly authorized under the subsequently-enacted, more specific provisions of the FDCA and its implementing regulations.

B. *WYETH V. LEVINE* IS READILY DISTINGUISHABLE

Pom next argues that the Ninth Circuit's decision cannot be squared with this Court's ruling in *Wyeth v. Levine*, 555 U.S. 555 (2009). In *Wyeth*, the Court held that the use of an FDA-approved label on a prescription drug did not preclude a state-law action for personal injury based on a manufacturer's failure to warn of the drug's known risks. In other words, States are free to impose tort liability for failure to warn about the potential side effets of a prescription drug even though FDA does not require the absent warnings.

Wyeth, however, was a preemption case; the issue was whether the FDCA impliedly preempted States from adopting their own requirements for drug labeling. The Court rested its decision that State regulation could coexist with FDA rules on the fact that Congress had chosen in the FDCA *not* to expressly preempt State drug labeling laws. This led the Court to conclude that FDA's drug labeling rules were intended as a floor, not a ceiling on regulation. *Id.* at 574-75.

Here the exact opposite is true. The statutory provisions that authorize FDA to regulate food labeling were added to the FDCA in 1990 with the passage of the Nutrition Labeling and Education Act ("NLEA"). Congress's purpose in enacting this legislation was twofold: (1) to "make sense of the confusing array of nutrition labels that confront all consumers every time they enter the supermarket" by mandating certain label disclosures (*see* 136 Cong. Rec. H5836-01 (July 30, 1990) (statement of Rep. Waxman)); and (2) to fix the lack of uniformity in the regulation of food labels that had emerged across all 50 States (*see* 136 Cong. Rec. S16607-02 (Oct. 24, 1990) (statement of Sen. Hatch) ("[I]t is wrong to . . . burden the manufacturer with the fear of potentially 50 different lawsuits from 50 different State attorneys general")). To further the second goal, Congress expressly preempted States from regulating food labels:

> no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce . . . . any requirement for the labeling of food of the type required by . . . [among others, Sections 343(f), which deals with naming, and 343(i), which deals with labeling] . . . that is not identical to the requirement of such section. . . .[6]

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[6] 21 U.S.C. § 343-1(a). A State requirement is "not identical to" federal requirements—and thus preempted—if it imposes labeling obligations that are "not imposed by or contained in the applicable provision (including any implementing regulation)" or that "[d]iffer from those specifically imposed by or contained in the applicable provision (including any implementing regulation)." 21 C.F.R. § 100.1(c)(4).

Congress's decision to expressly supplant State laws—including those that imposed more "stringent" requirements than the NLEA did[7]—shows that the NLEA and its implementing regulations were not intended as a "floor" but rather as the exclusive body of regulation to which food and beverage labels would be subject. Pom's suggestion that *Wyeth* allows for additional regulation on top of the NLEA ignores this fundamental distinction between the food and drug labeling provisions of the FDCA and contradicts Congress's expressed intent.

Pom's assertion that allowing Lanham Act challenges to labels expressly approved by FDA would "complement[ ] FDA regulation" (Pet. at 18) also makes no sense. As both the district court and the court of appeals recognized in their opinions in this case, permitting Pom's claim to proceed would invite "private parties [to] undermin[e], through private litigation, FDA's considered judgments." App. 11a. Congress has determined "to entrust matters of juice beverage labeling to the FDA," and FDA has responded with "comprehensive regulation of that labeling." *Id.* 12a. "In the circumstances here, the appropriate forum for Pom's complaints is the FDA"—not a private lawsuit under the Lanham Act. *Id.* (internal quotations omitted).

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[7] *See* 58 Fed. Reg. 2464.

III. THERE IS NO CONFLICT AMONG COURTS OF APPEALS TO BE RESOLVED

Relying once again upon its flawed reading of the opinion below, Pom argues that the Ninth Circuit's decision is in conflict with rulings by several other courts of appeal, which have held that false or misleading product labels are actionable under the Lanham Act even though they are regulated by FDA. But as noted above, the Ninth Circuit *did not* hold that FDA-regulated conduct is immune from attack. To the contrary, it stated explicitly that "mere compliance with the FDCA or with FDA regulations" will not "always (or [ ] even generally) insulate a defendant from Lanham Act liability." *Id.* The court's holding in this case was instead predicated on the fact that FDA's "comprehensive regulation" of the juice labeling at issue "authorize[d]" the product name and label that Coca-Cola chose. *Id*. 9a, 12a.

Properly read, the Ninth Circuit's ruling is entirely consistent with the various decisions from the Third, Eighth and Tenth Circuits that Pom cites. These courts have all held that, in some circumstances, Lanham Act challenges to statements concerning federally-regulated products will lie.[8]

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[8] *See Sandoz Pharm. Corp.* v. *Richardson-Vicks, Inc.*, 902 F.2d 222 (3d Cir. 1990) (Lanham Act challenge to drug label barred because it would have required court to interpret and enforce the FDCA); *Alpharma, Inc. v. Pennfield Oil Co.*, 411 F.3d 934 (8th Cir. 2005) (allowing Lanham Act challenge to claim that product was FDA-approved); *Cottrell, Ltd.* v. *Biotrol Intern., Inc.*, 191 F.3d 1248 (10th Cir. 1999) (Lanham Act challenge allowed despite fact that product in question was regulated by the Federal Insecticide, Fungicide, and Rodenticide Act).

So too did the Ninth Circuit in this case. In fact, other courts of appeal have implicitly, if not explicitly, recognized that false or misleading label statements concerning FDA-regulated products are open to Lanham Act attack. *See*, *e.g.*, *Mead Johnson & Co. v. Abbott Labs.*, 201 F.3d 883 (7th Cir. 2000); *Johnson & Johnson v. Carter-Wallace, Inc.*, 631 F.2d 186, 188 (2d Cir. 1980). Coca-Cola has never argued otherwise, and the Ninth Circuit did not contradict this well-accepted principle in its ruling. The court below merely agreed with other courts that, once the FDA explicitly approves a statement as "not misleading" and authorizes its inclusion on a product label, a competitor cannot challenge the accuracy of that statement through a private lawsuit under the Lanham Act.

IV. THE DECISION BELOW HAS NO WORRISOME IMPLICATIONS

Pom suggests that, if the Ninth Circuit's decision is permitted to stand, there effectively will be no regulation of food and beverage labels, and manufacturers will be free to deceive consumers (and harm competitors) with impunity. There is no merit to this argument.

First, as the decision below makes clear, Pom's claim was barred precisely *because of* the detailed regulatory scheme that Congress and FDA have put in place. Pom cites a General Accounting Office report that indicates that FDA lacks the resources to pursue individual actions against each manufacturer that adopts a deceptive label. That is precisely why FDA took the time decades

ago to study the issue, hold public hearings, and promulgate comprehensive regulations that dictate how all juice products—including flavored juice blends—should be labeled and promoted. This is not a case in which FDA has failed to exercise its statutory authority, or has done so only in minimal fashion. Rather, FDA has "regulat[ed] extensively in this area," App. 11a, and has set down rules that all juice manufacturers must follow.

Second, allowing private litigants to challenge FDA's labeling determinations by suing their competitors under the Lanham Act would lead to more confusion, not less. FDA has brought its expertise to bear and has decided "what content a label must bear, and the relative sizes in which the label must bear it, so as not to deceive." *Id.* 10a. Permitting lay judges and juries—which "lack the FDA's expertise in guarding against deception in the context of juice beverage labeling" (*id.* 12a)—to second-guess and contradict FDA's determinations would leave manufacturers with no clear rules to follow. Food and beverage companies would be subject to the views of multiple decision makers across the country as to how a product must be labeled in order to avoid consumer confusion. This was precisely the state of affairs that led Congress in 1990 to pass the NLEA, direct the FDA to promulgate a single set of regulations, and preempt States from imposing any requirements for food labels not identical to FDA requirements.

Finally, as Pom well knows, it simply is not the case that the U.S. Government is incapable of policing juice manufacturers who (unlike Coca-Cola) violate federal standards and engage in

deceptive labeling and promotion. In 2010, FDA issued a stern warning letter to Pom detailing numerous instances in which Pom had made unapproved claims that its juice products could prevent or treat a host of serious illnesses, including heart disease and cancer.[9] And just weeks ago, the U.S. Federal Trade Commission determined that these unsubstantiated health claims by Pom had amounted to a massive fraud on the American public, and warranted the issuance of a restraining order of unprecedented scope against Pom and its owners, Stewart and Lynda Resnick.[10] The Government does not need allies like Pom to help it fight deception in the realm of juice labeling.

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[9] http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/ucm202785.htm (last accessed February 11, 2013).

[10] *See* Opinion (http://www.ftc.gov/os/adjpro/d9344/130116pomopinion.pdf); Final Order (http://www.ftc.gov/os/adjpro/d9344/130116pomorder.pdf).

CONCLUSION

For the foregoing reasons, the Court should deny Pom's petition for a writ of certiorari.

Respectfully submitted,

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