

Supreme Court Clarifies Standing For Lanham Act False Advertising

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On March 25, 2014, a unanimous Supreme Court ruled that a manufacturer of components for use in refurbished toner cartridges has standing under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) to sue the maker of printers in which the cartridges could be used for false advertising. Static Control Components, Inc., the component manufacturer, alleged that Lexmark International, Inc., the printer company, falsely told consumers that they could not lawfully purchase replacement cartridges made by anyone other than Lexmark, and falsely told companies in the toner cartridge remanufacturing business that it was illegal to use Static Control's components.

The question before the Court was not whether Static Controls has constitutional standing under Article III, but whether it has so-called "prudential standing." The Court initially noted that "prudential standing" is a misnomer, and that the real question "is whether Static Control falls within the class of plaintiffs whom Congress authorized to sue under § 1125(a)." Slip Op. 8-9. If it does, a court "cannot limit a cause of action that Congress has created because 'prudence' dictates." Slip Op. 9. Rejecting the various approaches of the lower courts—from the competitor-only test, to antitrust standing, to the reasonable interest inquiry—the Supreme Court instead adopted a two-party inquiry.

First, a plaintiff must "fall within the zone of interests protected by the law invoked." Slip Op. 10. That is, under § 43(a) of the Lanham Act, "a plaintiff must allege an injury to a commercial interest in reputation or sales." Slip Op. 13. This would exclude consumers and "[e]ven a business misled by a supplier into purchasing an inferior product." *Id.*

Second, a plaintiff must show injuries "proximately caused by violations of the statute." Slip Op. 13. "[T]he proximate-cause requirement generally bars suits for alleged harm that is 'too remote' from the defendant's unlawful conduct." Slip Op. 14. Under the Lanham Act, then, a plaintiff "ordinarily must show economic or reputational injury flowing directly from the deception wrought by the defendant's advertising; and that occurs when deception of consumers causes them to withhold trade from the plaintiff." Slip Op. 15. "That showing," the Court pointed out, "is generally not made when the deception produces injuries to a fellow commercial actor that in turn affect the plaintiff." *Id.*

Applying this two-part test, the Court held that Static Controls has standing to sue for false advertising under the Lanham Act. The Court observed that Static Control's alleged lost sales and damage to business reputation "are injuries to precisely the sorts of commercial interests the Act protects." Slip Op. 19. The Court also concluded that Static Controls sufficiently alleged that Lexmark's misrepresentations proximately caused those injuries, because injury flows directly from the audience's belief in the disparaging statements even if the parties are not competitors, and because Static Control plausibly alleged lost sales resulting from the false statements despite the

fact that the causal chain linking the injury is not direct.

At bottom, the Court held “that a direct application of the zone-of-interests test and the proximate-cause requirement supplies the relevant limits on who may sue” for false advertising under the Lanham Act. Slip Op. 16. This new will open the doors to new plaintiffs in some Circuits and should provide standards for more consistent application of the Lanham Act nationwide.