

# Third Circuit Indicates Judicial Disenchantment With Consumer Survey Evidence

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On August 4, the United States Court of Appeals for the Third Circuit rendered its unanimous decision in *Pernod Ricard USA, LLC v. Bacardi USA, Inc.*, holding that a consumer survey need not be considered when a label or other advertisement, on its face and taken as a whole, leaves no room for a reasonable consumer to be misled. The decision follows the Seventh Circuit's reasoning in *Mead Johnson*, stating that "never before has survey research been used to determine the meaning of words, or to set the standard to which objectively verifiable claims must be held."

This decision may indicate growing judicial skepticism of survey evidence and lead to a decline in the use of consumer surveys in false advertising cases. For more about this case, read the [Kelley Drye client advisory](#).