Lexmark Case Decided – U.S. Supreme Court Creates New Standard for False Advertising Claims

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In *Lexmark Int'l, Inc., v. Static Control Components, Inc.*, No. 12-873 (March 25, 2014), the U.S. Supreme Court held that a party alleging false advertising under Section 43(a) of the Lanham Act, 15 U.S.C. Sec. 1125(a), must show "an injury to a commercial interest in sales or business reputation proximately caused by the defendant's misrepresentations."

This holding creates a new standard for false advertising claims and invalidates familiar legal doctrine.

THE FACTS OF THE CASE

Lexmark, the defendant in this lawsuit, manufactures laser printers and sells toner cartridges for these printers. Static Control, the plaintiff, makes components for remanufacturers of Lexmark printer cartridges.

Static Control had alleged "lost sales and damage to its business reputation" as a direct result of Lexmark's false, misleading, and derogatory statements about Static Control and its clients, the remanufacturers of Lexmark toner cartridges.

THE LAW PRIOR TO *LEXMARK*

U.S. courts had long used "three competing approaches to determining whether a plaintiff has standing to sue [for false advertising] under the Lanham Act." A plaintiff who did not have the requisite standing could not bring a false advertising claim.

The Supreme Court rejected each of these tests. They are no longer valid law.

THE NEW LAW

In *Lexmark*, the Supreme Court held that a plaintiff's ability to sue for false advertising is no longer a question of "standing."

Rather, it "presents a straightforward question of statutory interpretation: Does the cause of action in Sec. 1125(a) extend to plaintiffs like Static Control?" Put another way, the question is "whether Static Control falls within the class of plaintiffs whom Congress has authorized to sue under Sec. 1125(a)."

The courts must answer this question by considering two factors: (a) the zone of interests protected by the law invoked, and (b) proximate cause.

(a) Zone of Interests - For the zone of interests inquiry, the Supreme Court held that the plaintiff must allege and prove "**an injury to a commercial interest in reputation or sales**."

This requirement is *not* met by "a consumer who is hoodwinked into purchasing a disappointing product," or by "a business misled by a supplier into purchasing an inferior product."

(b) Proximate Cause - For the proximate cause inquiry, the Supreme Court held that the plaintiff must allege and prove "**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.**"

This requirement is *not* met "when the deception produces injuries to a fellow commercial actor that in turn affect the plaintiff."

APPLYING THE NEW LAW TO *STATIC* CONTROL'S FALSE ADVERTISING CLAIM

(a) Zone of Interests - Static Control alleged that its "position in the marketplace has been damaged by Lexmark's false advertising." Therefore, the Supreme Court held, Static Control is "within the zone of interests" protected by Section 43(a) of the Lanham Act.

(b) Proximate Cause - Static Control also satisfied the proximate cause requirement because it alleged "that Lexmark disparaged its business and products by asserting that Static Control's business was illegal." As the Supreme Court explained, "when a party claims reputational injury from disparagement, competition is not required for proximate cause; and that is true even if the defendant's aim was to harm its immediate competitors, and the plaintiff merely suffered collateral damage."

In addition, Static Control's specific business model supported a finding of proximate cause. Static Control's products "both (1) were necessary for, and (2) had no other use than, refurbishing Lexmark toner cartridges." Therefore, any false advertising directed at remanufacturers of Lexmark toner cartridges "necessarily injured Static Control as well."

The Supreme Court noted that its approval of Static Control's false advertising claim extends only to Static Control's *allegations*. Static Control still has to *prove* both the zones of interest element and the proximate cause element of its Section 43(a) claim with factual evidence.

EDWARD S. ROGERS AND THE MEANING OF "UNFAIR COMPETITION"

The term "unfair competition" does not mean that the plaintiff and the defendants must actually be competitors.

To drive home that oft-misunderstood point, the Supreme Court quoted a 1929 (!) article in the Yale Law Journal by the drafter of the Lanham Act and former name partner of the Pattishall law firm, Edward S. Rogers. Rogers – whom the Supreme Court calls a "leading authority in the field" – put the matter memorably: "There need be no competition in unfair competition, just as there is no soda in soda water, no grapes in grape fruit, no bread in bread fruit, and a clothes horse is not a horse but is good enough to hang things on."

In other words, it is a mistake, explained the Supreme Court, "to infer that because the Lanham Act treats false advertising as a form of unfair competition, it can protect only the false-advertiser's direct competitors."

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