

# District Court Judge Finds that Herbal Extract Manufacturer Fails to Capture the Essence of a Lanham Act Claim

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In a recent application of the Supreme Court's 2014 *Lexmark* decision on standing, Judge Katharine Hayden of the District of New Jersey held last month that an herbal extract manufacturer allegedly misled by its supplier into purchasing diluted saw palmetto extract lacked standing to bring a Lanham Act false advertising claim. [\*Jiaherb, Inc. v. MTC Indus., Inc.\*, No. 18-15532, 2019 WL 4785784 \(D.N.J. Sept. 30, 2019\)](#).

Jiaherb had purchased all of its saw palmetto extract—\$442,262.50 worth—from MTC, a nutritional ingredient supplier and distributor. Jiaherb alleged that MTC induced it to unknowingly purchase a diluted product cut with hard-to-detect vegetable oils, misrepresenting that the extract was unadulterated. The complaint alleged injuries to Jiaherb's "business, reputation, and good will" as well as lost profits due to cancelled orders, and included claims under the Lanham Act, the UCC, and state law theories of liability.

As we have [discussed previously](#), under the first prong of the *Lexmark* test, a plaintiff must "fall within the zone of interests protected by" the Lanham Act in order to have standing to sue. While Lanham Act standing is not exclusively limited to direct competitors, "[a] consumer who is hoodwinked into purchasing a disappointing product" falls outside of its zone of protected interests and "cannot invoke the protection of the Lanham Act." *Lexmark Int'l, Inc. v. Static Control Components*, 134 S. Ct. 1377, 1390 (2014).

Judge Hayden dismissed Jiaherb's Lanham Act claim in a short opinion. She noted that the Third Circuit had upheld the dismissal of a case with similar facts in *Knit With v. Knitting Fever, Inc.* (a case [previously covered by this blog](#)), in which a business purchasing yarn from a supplier alleged that the yarn was inferior to what it expected. The Third Circuit in *Knit With* held the plaintiff did not have standing to sue for a Lanham Act violation, quoting *Lexmark's* statement that "[e]ven a business misled by a supplier into purchasing an inferior product is, like consumers generally, not under the Act's aegis." Applying the same reasoning, Judge Hayden found that, since Jiaherb characterized its role as that of a consumer of MCT's products, its alleged injury was merely that of a "consumer-entity that was misled into purchasing a 'disappointing product.'" This, Judge Hayden noted, "is precisely the type [of injury] that the *Lexmark* Court excluded from Lanham Act relief."

However, in a footnote in its opposition brief, Jiaherb had noted that its relationship with MCT might be more analogous to potential competitors. Based on this possibility, Judge Hayden dismissed plaintiff's Lanham Act claim without prejudice, allowing for the possibility that Jiaherb might replead to assert a "less limited" relationship.

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