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NOTES

PRUDENTIAL STANDING LIMITATIONS ON LANHAM ACT FALSE ADVERTISING CLAIMS

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Section 43(a) of the Lanham Act provides a federal cause of action for false advertising. There is considerable disagreement among the federal circuit courts over the proper way to determine standing under this statute. Much of the disagreement centers on how the plaintiff's status as a direct competitor of the defendant should affect the standing inquiry. This Note argues that the five-factor test currently used by the U.S. Courts of Appeals for the Third, Fifth, and Eleventh Circuits is the best approach. Further, this Note argues that an allegation of a commercial injury by a direct competitor of the defendant satisfies this test.

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INTRODUCTION

From 1995 to August 2001, McDonald's Corp. ran various promotional games, including "Monopoly Games at McDonald's," "Who Wants to be a Millionaire," and "Hatch, Match and Win."¹ Each of these games offered customers the chance to win a variety of prizes, ranging from small cash awards and free food or beverages to automobiles and cash prizes of \$1 million.² Customers won these prizes by collecting game pieces provided with McDonald's food items.³ McDonald's ran extensive advertising campaigns, representing that all participating customers had a fair and equal opportunity to win the offered prizes.⁴

Around April 2000, the Federal Bureau of Investigation (FBI) began investigating these games.⁵ While the promotions were still running, the FBI informed McDonald's that its game pieces were not being distributed randomly.⁶ Nonetheless, McDonald's continued running the games and publishing advertisements representing that all consumers had a fair and

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* J.D. Candidate, 2009, Fordham University School of Law. I would like to thank my parents for their encouragement throughout this process.

1. *Phoenix of Broward, Inc. v. McDonald's Corp.*, 489 F.3d 1156, 1159 (11th Cir. 2007).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.* at 1160.

6. *Id.*