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California Supreme Court Revives Unfair Competition Class Actions Challenging Mislabeling

by Roxane A. Polidora and Connie J. Wolfe

In the California Supreme Court's long awaited decision in Kwikset Corp. v. Superior Court (Benson), *--- Cal.Rptr.3d ----, 2011 WL 240278 (Cal.), 11 Cal. Daily Op. Serv. 1260 (January 27, 2011), the Court addressed the issue of what constitutes "lost money or property" sufficient for standing under California's unfair competition law (Cal. Bus. & Prof. Code § 17200* et seq. *("UCL")) and false advertising law (Cal. Bus. & Prof. Code § 17500* et seq. *("FAL")). The Supreme Court held (in a 5 to 2 decision) that plaintiffs who are deceived by a product's label into purchasing the product have satisfied the "lost money or property" requirement for standing. The Court's decision thus clarifies the extent to which "economic injury" is required to plead standing.*

In *Kwikset* the plaintiffs alleged that purchases of locksets in reliance on false "Made in U.S.A." labeling and other similar misrepresentations constituted violations of the UCL and FAL. During the course of the case, Proposition 64 (Gen. Elec. (Nov. 2, 2004) was enacted. Proposition 64 limits standing under both the UCL and FAL to a person who "has suffered injury in fact and has lost money or property as a result" of the allegedly wrongful act. In applying the new standing requirement to the pleadings in *Kwikset*, the Court of Appeal held that allegations that plaintiffs purchased defendant's locksets in reliance on "Made in the U.S.A." labeling, and otherwise would not have done so, were insufficient to establish standing under the "lost money or property" requirement. The Court of Appeal reasoned that although plaintiffs had spent money on the locksets, "they received the locksets in return" and had not alleged that the locksets were "overpriced or defective."

The Supreme Court disagreed and held that plaintiffs' allegations satisfied the UCL and FAL standing requirement. The Court defined the standing requirement of Sections 17204 and 17535 to consist of a two part test: "a party must now (1) establish a loss or deprivation of money or property sufficient to qualify as injury in fact, *i.e., economic injury*, and (2) show that that economic injury was the result of, *i.e., caused by*, the unfair business practice or false advertising that is the gravamen of the claim." (emphases in original).

With respect to the "economic injury" requirement, the Court held that "the quantum of lost money or property necessary to show standing is only so much as would suffice to establish injury in fact," e.g., "some specific 'identifiable trifle' of injury." The Court reasoned that a consumer who relies on the truth and accuracy of a label in making a purchase suffers economic harm because such consumer "has purchased a product that he or she *paid more for* than he or she otherwise might have been willing to pay if the product had been labeled accurately." Thus, if a consumer alleges that he or she relied on a misrepresentation in purchasing a product and would not have bought the product but for the misrepresentation, such consumer has suffered economic injury sufficient to confer standing to sue under the UCL. Such consumer is not required to allege that the product was overpriced or defective in order to suffer economic injury.

The *Kwikset* holding is of concern to anyone selling goods or services. Following *Kwikset*, a consumer who purchases a product may have standing to bring a UCL consumer class action by alleging that he or she would not have bought the product but for a misrepresentation made in the advertising or labeling of the product, regardless of whether the product is overpriced or defective.

If you have any questions about the content of this publication, please contact the Pillsbury attorney with whom you regularly work or the authors below:

Roxane A. Polidora (bio)
San Francisco
+1.415.983.1976
roxane.polidora@pillsburylaw.com

Connie J. Wolfe (bio)
San Diego
+1. 619.544.3139
connie.wolfe@pillsburylaw.com