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## Legal Updates & News

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#### Is the Tide Turning for California's Unfair Competition Law?

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On February 25, 2009, a California appellate court issued an important decision for businesses defending against claims under California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* ("UCL"). Prior to the passage of Proposition 64, which amended the UCL to require consumers to demonstrate "injury in fact" and "lost money or property" in order to have standing to assert a UCL claim, California was long known as a shakedown state. After the court's decision in *Kwikset Corp. v. Superior Court*, No. G040675 (Feb. 25, 2009), that reputation may become less deserving.

At issue in *Kwikset* was whether the plaintiffs had adequately pled the requisite injury in fact and loss of money or property. The complaint alleged that the plaintiffs purchased several Kwikset locksets that were represented as "Made in U.S.A." when in fact certain components of the locksets were made elsewhere. Plaintiffs further contended that they saw and relied on such misrepresentations in deciding to purchase the locksets and would not have otherwise made the purchases.

Though the court determined that the plaintiffs had satisfied the "injury in fact" requirement by virtue of their allegation that the false country of origin labels caused them to buy products they did not want, the court held that the plaintiffs had not shown the requisite loss of money or property. According to the court, there can be no economic loss where a plaintiff gets the full benefit of the bargain (i.e., gets what he or she paid for) even if the plaintiff would not have purchased the product but for the misrepresentation.

Here, real parties allege "[d]efendants' 'Made in U.S.A.' [and similar] misrepresentations caused [them] to spend and lose the money...paid for the locksets." But, as petitioners note, they received locksets in return. Real parties do not allege the locksets were defective, or not worth the purchase price they paid, or cost more than similar products without false country of origin labels. Nor have real parties alleged the locksets purchased either were of inferior quality or failed to perform as expected.

On this basis, the court determined that the UCL's "lost money or property" requirement can only be satisfied where the plaintiff suffers the type of loss that is eligible for restitution.

*Kwikset* is an important case because the UCL is a frequently invoked consumer protection statute. By rejecting a broad reading of the "lost money or property" requirement, the court has narrowed the type of claims that, until now, many thought were readily cognizable under the UCL.

For further information on this topic and other consumer litigation matters, please contact [Rebekah Kaufman](#) or [Dave McDowell](#).