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Who Has Standing to Sue for Unfair Competition or False Advertising in California?

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Kwikset v. Superior Court (Real Party in Interest: James Benson)
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The California Supreme Court recently clarified the "standing" requirement ("standing" means eligibility to sue) that California's Proposition 64 created for private plaintiffs seeking to sue under California's Unfair Competition Law (Business & Professions Code sections 17200 et seq.), and False Advertising Law (Business & Professions Code sections 17500 et seq).

In 2004, California voters passed Proposition 64, which changed private party standing from "…any person acting for the interests of itself, its members or the general public," to any "…person **who has suffered injury in fact and has lost money or property**" (emphasis added) as a result of the unfair competition. Proposition 64 was passed as a result of public outrage over questionable lawsuits filed by lawyers whose clients had not been harmed by any unfair competition or false advertising. The Court characterized some of the more notorious, pre-Proposition 64 actions as "shakedown lawsuits."

In *Kwikset v. Superior Court*, the plaintiff, James Benson, sued defendant Kwikset Corporation for falsely labeling its locksets "Made in

U.S.A," when some components were allegedly made in Taiwan, and some assembly had been performed in Mexico. The plaintiff brought three causes of action under the Unfair Competition Law (UCL) for unfair competition, and one cause of action under the False Advertising Law (FAL) for false advertising. The plaintiff sued for only injunctive relief, and alleged that the Kwikset had misrepresented the place of origin of its locksets. The product labels for the locksets allegedly induced plaintiff to purchase the locksets due to the false representation that they were "Made in U.S.A." Plaintiff alleged that he would not have purchased the locksets if they had not been misrepresented.

The California Court of Appeal held that the plaintiff lacked standing to sue under the UCL or FAL because he had not suffered "injury in fact" as required by Proposition 64. The California Supreme Court reversed the Court of Appeal and held that the plaintiff did have standing to sue under the UCL and FAL because he had suffered injury in fact and economic loss as a result of Kwikset's misrepresentation.

Proposition 64 declared: "It is the intent of the California votes in enacting this act to prohibit private attorneys from filing lawsuits for unfair competition where they have no client who has been injured in fact under the standing requirements of the United States Constitution." The California Supreme Court thus examined U.S. federal law interpreting the term "injury in fact.' That term has been defined by the U.S. Supreme Court as "an invasion of a legally protected interest which is (a) concrete and particularized; and (b) actual or imminent, not "conjectural" or "hypothetical."

The California Supreme Court noted that the standard for standing under California's Proposition 64 is **narrower** than the federal, "injury in fact," standard. Proposition 64 allows standing only if the plaintiff has suffered *economic injury*, which is but one subset of the broader category of "injury in fact." The Court then considered whether the plaintiff had suffered economic injury.

As a threshold matter, the Court observed that "the quantum of lost money or property" to establish standing is only so much as necessary to constitute "injury in fact." For standing purposes, that is a low burden. To emphasize how low, the Court quoted U.S. Supreme Court Justice, Samuel Alito: "injury-in-fact is not Mount Everest." Put another way, the "injury in fact" test is met, for **standing** purposes, by some specific, identifiable "trifle of injury."

Applying these principles, the Court concluded that the plaintiff in *Kwikset* had pleaded an economic injury sufficient to establish his standing to sue under the UCL and FAL. The Court observed that, to some consumers, it mattered whether a product was in fact "Made in U.S.A.," just as to some consumers it matters whether wine was grown in a particular region, whether diamond rings came from a country without human rights violations, whether grapes were picked by union labor, and whether food was kosher.

As to whether a false label could actually cause **economic** injury, the Court concluded:

For each consumer who relies on the truth and accuracy of a label and is deceived by misrepresentations into making a purchase, the economic harm is the same: the 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.

For example, a consumer who unknowingly buys a fake Rolex watch has been economically injured, even if the fake Rolex keeps perfect time. The Court reasoned that the increment of economic injury is the "extra money paid" for the misrepresented product.

The first and most obvious lesson of *Kwikset* is that manufacturers and all parties in the distribution chain must take care in ensuring the accuracy of the labels placed on their products and the representations that they make regarding their services. Time will tell, but Kwikset may well have opened the door to an increase in consumer actions under California's Unfair Competition and False Advertising laws.