manatt

**March 10, 2009**


## Locked Out: Plaintiffs Alleging Unfair Competition Claim Relating to "False Origin" of Locksets Failed to Adequately Allege Requisite Economic Injury

**David Nemecek and Andrew Struve**

False advertising claims under California's Unfair Competition Law ("UCL") require plaintiffs to plead and prove injury in fact and a loss of money or property as a result of the alleged violation. Alleged false representations that a product was "Made in the U.S.A.," without more, do not meet the latter requirement, said the Court of Appeal in *Kwikset v. Superior Court (Benson)*, __ Cal.App.4th __, 2009 WL 457921 (No. G040675, Feb. 25, 2009). Instead, a diminution in the value received, or a higher cost paid, is required.

The *Kwikset* litigation spanned nearly ten years, and has produced multiple Court of Appeal opinions, Supreme Court orders and trial court rulings. In January 2000, the plaintiff, Benson, filed a representative UCL action alleging that Kwikset falsely represented that its locksets, which Benson said contained parts manufactured in Taiwan and Mexico, were "Made in the U.S.A." The trial court agreed and enjoined Kwikset from labeling its product as "Made in the U.S.A." Kwikset appealed.

While the first appeal was pending, California voters passed Proposition 64, which amended the UCL to impose new standing and injury requirements. The amended statute confers UCL standing only upon a "person who has suffered injury in fact and has lost money or property as a result of . . . unfair competition." Business and Professions Code § 17201. The Court of Appeal upheld the trial court's decision on the merits, but remanded the case to the trial court to determine whether the plaintiff could meet these new requirements. See *Benson v. Kwikset*, 152 Cal.App.4th 1254, 1284 (2007).

Benson then added three additional plaintiffs who alleged they had

### NEWSLETTER EDITORS

**Barry Landsberg**
Partner
blandsberg@manatt.com
310.312.4259

**Andrew Struve**
Partner
astruve@manatt.com
310.312.4259

### OUR PRACTICE

Whether you're a multi-national corporation, an ad agency, a broadcast or cable company, an e-commerce business, or a retailer with Internet-driven promotional strategies, you want a law firm that understands ... more

. Practice Group Overview
. Practice Group Members

### INFO & RESOURCES

. Past Editions
. Subscribe
. Unsubscribe
. Newsletter Disclaimer
. Technical Support
. Manatt.com

bought Kwikset locks in reliance upon the "Made in the U.S.A." label, and would not have purchased them otherwise. The trial court overruled Kwikset's subsequent demurrer, holding that these new allegations satisfied the UCL's new standing and injury requirements, in that the plaintiffs were induced to buy products from Kwikset that they did not want and would not have purchased.

The Court of Appeal, however, granted writ review, disagreed that the plaintiffs had met the loss of money or property requirement, and ordered that the case be dismissed. The court first determined that the plaintiffs had adequately alleged "injury in fact," meaning "an actual or imminent invasion of a legally protected interest, in contrast to an invasion that is conjectural or hypothetical." The court reasoned that Kwikset had violated a provision of the false advertising law (Bus. & Prof. Code Sections 17500 et seq.) contained specifically in Section 17533.7, which makes it unlawful to falsely advertise any product as American-made. Citing this section, the court held that "truthful country of origin product labeling is a legally protected interest."

Plaintiffs did not, however, allege they had lost money or property as a result of the false labeling. The court said that such an injury must be "economic, at least in part" to meet the UCL injury requirement. Plaintiffs' contention that they had paid for mislabeled locksets they would not otherwise have bought was not enough, because plaintiffs did, in fact, receive locksets in return for their money. Plaintiffs had not alleged, for example, that the value of the locksets they received was diminished by virtue of their non-U.S. origin. (Although plaintiffs argued to the Court of Appeal that they could amend to add such allegations, the court rejected the proffered amendment, as it had not been made at the trial court level.)

The court cited with approval several recent decisions interpreting the UCL's new standing and injury requirements as requiring pleading and proof of economic injury. These cases, all of which were dismissed on the pleadings, include *Animal Legal Defense Fund v. Mendes*, 160 Cal.App.4th 136 (2008) (alleged cruelty to dairy calves did not cause economic injury to milk purchasers in the absence of allegations that the milk purchased was of inferior quality); *Hall v. Time, Inc.*, 158 Cal.App.4th 847 (2008) (no economic injury caused by invoice prematurely sent to book purchaser, where purchaser had received the book he paid for and did not attempt to return it); *Peterson v. Cellco Partnership*,164 Cal.App.4th 1583 (2008) (no economic injury caused by the sale of unauthorized equipment insurance, absent allegations that

purchasers paid more for the product because of the insurance); and *Medina v. Safe-Guard Products, Internat., Inc.*, 164 Cal.App.4th 105 (2008) (purchase of insurance from unlicensed broker did not cause economic injury merely because the broker was unlicensed).

Under *Kwikset,* if a purchaser receives equivalent value for the product or service that he paid for, he cannot establish that he suffered an economic injury within the meaning of the UCL. A mere allegation that the plaintiff would not have purchased the product or service at issue had he known of the alleged misrepresentation is insufficient to confer standing. Instead, the plaintiff must allege that the product or service was worth less than what he paid for it, or is somehow unsatisfactory, defective, of inferior quality, or otherwise monetarily devalued as a result of the specific injury in fact that is alleged.

---

FOR ADDITIONAL INFORMATION ON THIS ISSUE, CONTACT:

**David Nemecek** Mr. Nemecek has significant experience in the field of antitrust litigation, and has litigated class actions involving claims of price fixing and monopolization. He was a member of the trial team for two of the largest antitrust cases in California and Minnesota history. He also has experience litigating cases involving the California unfair competition laws, including claims involving California Business & Professions Code Section 17200, and false advertising claims brought pursuant to the Lanham Act and California Business & Professions Code Section 17500. Mr. Nemecek also provides compliance counseling relating to the antitrust and unfair competition laws, including sales, distribution and pricing counseling, as well as antitrust compliance relating to mergers and joint ventures, and intellectual property licensing issues.

**Andrew Struve** Mr. Struve's practice focuses on complex commercial litigation and unfair competition actions, with a particular expertise in healthcare, insurance and the defense of consumer suits. In the healthcare field, Mr. Struve has litigated class and other representative actions, federal and state qui tam litigation, antitrust suits, RICO actions, managed care contracting suits, partnership actions, bad faith claims and payment disputes, as well as conducted internal investigations and compliance audits. In the insurance field, Mr. Struve has litigated numerous class actions and individual unfair business practices suits, bad faith actions, and rescission litigations. Mr. Struve also

has represented clients in trials and other litigation of significant matters involving real estate, title insurance, intellectual property, false advertising, employment, misappropriation of trade secrets, product liability, professional liability, partnerships, indemnity, contribution, subrogation, and other areas of the law.