California Supreme Court Announces Expansive Standing Rule Under the UCL

Posted on January 30, 2011 by Larry Golub

Since the passage of Proposition 64 in November 2004 by the California electorate, which sought to limit the scope of frivolous or "shakedown" lawsuits under the Unfair Competition Law, Business & Professions Code section 17200 et seq. (the "UCL"), courts in California have waited for the California Supreme Court to clarify the scope of standing for a plaintiff to pursue a UCL claim. In 2009, the Court issued its decision in *In Re Tobacco II Cases*, 46 Cal. 4th 298 (2009), which held that only the named plaintiffs bringing a UCL claim had to demonstrate standing, not each class member that the named plaintiffs sought to represent.

Now, in *Kwikset Corporation, Inc. v. Superior Court*, decided January 27, 2011, the Court finally analyzed the scope of the Prop 64 language that limited UCL standing to "a person who has suffered injury in fact and has lost money or property as a result of the unfair competition." In a 5-2 opinion, the Court cut back Prop 64's limitation on standing, which will allow more UCL cases to at least proceed beyond the demurrer stage.

Kwikset involved named plaintiffs who purchased a lockset that said on the packaging "Made in U.S.A," but it was substantially made in Taiwan and Mexico. While there were no claims that the lockset was defective or worth less than ones actually made in the United States, the sole contention made in an amended complaint was that the persons would not have purchased the lockset had it not been important to them that it was made in the United States: "When purchasing the locksets each plaintiff 'saw and read Defendants' misrepresentations . . . and relied on such misrepresentations in deciding to purchase . . . them. [Each plaintiff] was induced to purchase and did purchase Defendants' locksets due to the false representation that they were "Made in U.S.A." and would not have purchased them if they had not been so misrepresented.'"

The Court of Appeal had found that the complaint should be dismissed based on the UCL standing requirements imposed by Prop 64, explaining that although the plaintiffs "had adequately alleged injury in fact, they had not alleged any loss of money or property," and that while their "patriotic desire to buy fully American-made products was frustrated," such an injury "was insufficient to satisfy the standing requirements" of the UCL.

The Supreme Court, in a lengthy decision, reversed and found that

"plaintiffs who can truthfully allege they were deceived by a product's label into spending money to purchase the product, and would not have purchased it otherwise, have 'lost money or property' within the meaning of Proposition 64 and have standing to sue."

The *Kwikset* case sets forth a standing test broader than just for product mislabeling cases, as the Court later stated as follows:

"As we shall explain, a party who has lost money or property generally has suffered injury in fact. Consequently, the plain language of these clauses suggests a simple test: To satisfy the narrower standing requirements imposed by Proposition 64, 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." (Emphasis by Court.)

And, to provide further guidance for future cases, the Court observed:

"There are innumerable ways in which economic injury from unfair competition may be shown. A plaintiff may (1) surrender in a transaction more, or acquire in a transaction less, than he or she otherwise would have; (2) have a present or future property interest diminished; (3) be deprived of money or property to which he or she has a cognizable claim; or (4) be required to enter into a transaction, costing money or property, that would otherwise have been unnecessary."

The majority opinion in *Kwikset* also reaffirmed that, apart from demonstrating economic injury in the form of loss of money or property, the named plaintiff must still allege the causal element of reliance ("that the misrepresentation was an immediate cause of the injury-producing conduct"), as earlier set forth in the Court's *Tobacco II* decision. The Court also held that there is no need to show for standing purposes that the lost money or property would otherwise qualify as restitution, the only monetary remedy permitted under the UCL. This was a point noted by the Court in its rent decision in *Clayworth v. Pfizer, Inc.*, 49 Cal.4th 758 (2010), which found that parties may seek an injunction under the UCL whether or not restitution is also available.

Despite the breadth of the *Kwikset* opinion and the position by Prop 64 proponents that this decision will undercut the protections against frivolous lawsuit intended by the proposition, in two reassuring footnotes, the Court also confirmed that it was only considering matters at the demurrer stage, where a court "must take the allegations as true," and that "[o]nce this threshold pleading requirement has been satisfied, it will remain the plaintiff's burden thereafter to prove the elements of standing and of each alleged act of unfair competition, and the trial court's role to exercise its considerable discretion to determine which, if any, of the various equitable and injunctive remedies provided for by sections 17203 and 17535 may actually be warranted in a given case."

Finally, in a powerful dissent, two of the Supreme Court justices explained how they would have affirmed the Court of Appeal's decision and dismissed the lawsuit since the majority's opinion disregards Prop 64's actual statutory language and the intent of the electorate to limit standing under the UCL. Indeed, the dissent even references the fact that proponents of Prop 64 included the Kwikset case on their website as an example of a "shakedown lawsuit" that the proposition sought to curb. Ending its minority opinion, the dissent concluded that the majority opinion had relieved plaintiffs of the burden to show standing imposed by Prop 64:

"All plaintiffs now have to allege is that they would not have bought the mislabeled product. . . . This cannot be what the electorate intended when it sought 'unequivocally to narrow the category of persons who could sue businesses under the UCL.'"