



## California Supreme Court Interprets UCL Standing Requirement Broadly in False Advertising “Made in U.S.A.” Case of *Kwikset v. Superior Court (Benson)*

By: Karen R. Palmersheim

On January 27, 2011, the California Supreme Court addressed the question of what constitutes “loss of money or property” for standing purposes under California’s unfair competition law (Business and Professions Code section 17200 *et seq.* (the “UCL”)) and false advertising law (Business and Professions Code section 17500 *et seq.*). In *Kwikset Corporation et al. v. Superior Court (Benson)*, the Supreme Court held that plaintiffs who allege they were deceived by a product’s label into purchasing a product that they would not have purchased otherwise have “lost money or property” as required by California Proposition 64 and have standing to sue under the UCL and false advertising law.<sup>1</sup>

The *Kwikset* case was brought by real party in interest Benson, who alleged that Kwikset falsely marketed as “Made in U.S.A.” locksets that contained screws or pins made in Taiwan or that were assembled in Mexico. Benson alleged that Kwikset’s false advertising violated the UCL and false advertising law. The trial court found in favor of Benson and granted injunctive relief. The trial court denied the claim for restitution, however, as it “would likely be very expensive to administer, and the balance of equities weighs heavily against such a program” where the violations had ceased.<sup>2</sup> While both sides’ appeals were pending, Proposition 64 was passed. Because the new standing requirement in Proposition 64 applied to pending cases, the Court of Appeal gave Benson the opportunity to plead the new Proposition 64 standing requirement of injury in fact and loss of money or property.

The amended complaint alleged that Benson relied on Kwikset’s “Made in U.S.A.” misrepresentations in deciding to purchase the locksets. Benson also alleged he would not have purchased the locksets if the labels did not contain the “Made in the U.S.A.” representation.<sup>3</sup> The trial court held that Benson adequately pled standing. The Court of Appeal disagreed, and ordered the trial court to sustain Kwikset’s demurrer on the grounds of lack of standing. The Court of Appeal believed that although the plaintiffs alleged “injury in fact,” they had not alleged “loss of money or property” because they received locksets in return, which were not overpriced or defective (and therefore received the benefit of the bargain).

In a 5-2 decision, the Supreme Court disagreed, and held that where an individual relies on misrepresentations on a label in purchasing a product that the individual would not have purchased without the misrepresentation, the individual does not receive the “benefit of the bargain” even if the product is not otherwise overpriced or defective. The Supreme Court offered the following examples. If a Jew or Muslim purchases food advertised as kosher or halal that is not, or if a parent purchases food advertised as organic that is not, those individuals have not received the benefit of the bargain.<sup>4</sup> The Supreme Court also rejected the Court of Appeal’s belief that a plaintiff can only satisfy the “loss of money or property” requirement if the plaintiff is eligible for restitution. This is because



the requirements for standing and restitution are different under UCL. Restitution requires both a loss by a plaintiff and a gain by a defendant.<sup>5</sup> But economic injury for standing purposes may involve a loss by a plaintiff without any corresponding gain by a defendant. The Supreme Court noted that to make standing dependent on eligibility for restitution would turn the remedial scheme of the UCL on its head; as injunctions are the primary form of relief available under the UCL, whereas restitution is an "ancillary relief."<sup>6</sup>

In its holding, the Supreme Court noted that the purpose of Proposition 64's standing requirement was to confine standing to those who had actually transacted with the defendant and to eliminate suits by individuals who did not use the defendant's product or service or did not have any business dealing with the defendant. As such, the Supreme Court broadly defined the "injury in fact and loss of money or property" standing requirement. All that is required for standing under the UCL and false advertising law is that an individual suffer an economic injury that was caused by the defendant's unfair practice or false advertising, which can be shown in "innumerable ways."<sup>7</sup> The Supreme Court also emphasized that "labels matter." The Supreme Court held that for some individuals, a misrepresentation regarding processes or place of origin matter.

This decision will likely encourage class action product mislabeling lawsuits. A plaintiff who did not suffer any type of quantifiable economic loss may have standing to sue by claiming he or she would not have bought the product "but for" the misrepresentation. It is important to note, however, that *Kwikset* involved a demurrer to the complaint, where the allegations in the complaint must be presumed true. The Supreme Court noted that "[a]t succeeding stages, it will be plaintiffs' obligations to produce evidence to support, and eventually prove, their bare standing allegations."<sup>9</sup>

#### Endnotes

- <sup>1</sup> *Proposition 64* was a California voter initiative passed in November 2004. It added the requirement for standing under the UCL and false advertising that a plaintiff suffer "injury in fact" and have lost money or property as a result of the unfair competition or false advertising.
- <sup>2</sup> *Kwikset Corporation et al. v. Superior Court*, California Supreme Court Case No. S171845, Ct.App. 4/3 G040675, Orange County Superior Case No. 00CC01275 (real party in interest James Benson) ("Slip Opn.").
- <sup>3</sup> *Slip Opn.* at p. 5.
- <sup>4</sup> *Id.* at pp. 24-25.
- <sup>5</sup> *Id.* at p. 31.
- <sup>6</sup> *Ibid.*
- <sup>7</sup> *Id.* at p. 11.
- <sup>8</sup> *Id.* at p. 18.
- <sup>9</sup> *Ibid.*, n. 11.

For more information on the matters discussed in this *Locke Lord's QuickStudy*, please contact the author:

**Karen R. Palmersheim** | T: 213-687-6742 | [kpalmersheim@lockelord.com](mailto:kpalmersheim@lockelord.com)