The Newest Trend in Consumer Litigation: "Made in the U.S.A" Claims

By Lily Toubi

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With the recent controversy surrounding products manufactured in China, consumers claim that they are now purchasing products based upon statement of origin markings, such as "Made in U.S.A." Whether or not this is true, the fact remains that product manufacturers are seeing an increase in lawsuits involving products marked "Made in U.S.A."

Current California Litigation

In May 2007, Kevin Levine filed a class action lawsuit against BIC USA, Inc., seeking damages and injunctive relief based on allegations that disposable BIC lighters marked "Made in U.S.A." were not actually manufactured in the United States.[1] Similarly, in September 2007, plaintiff David Paz filed a class action lawsuit alleging similar claims against Playtex Products, Inc., and its spill-proof cups marked "Made in U.S.A." In both cases, plaintiffs claim the "Made in U.S.A." label is false and misleading under California's Consumer Legal Remedies Act and Unfair Competition Laws because the products and their components are manufactured abroad.

U.S. Customs Service Regulations Governing Country of Origin Statements

With limited exception, there is no requirement that goods made partially or wholly in the United States be marked "Made in U.S.A."[2] However, U.S. Customs Service regulations do require that all products of foreign origin imported into the U.S. be marked with the name of the foreign country of origin.[3]

There is an exception to the mandatory country of origin labeling under U.S. Customs Service regulations: if an imported good is last "substantially transformed" in the U.S., the good does not need to be marked with a country of origin. An imported good is "substantially transformed" in the U.S. when a manufacturing process in the U.S. results in the production of a new and different product.

While the "substantial transformation" of an imported product in the U.S. may exempt a manufacturer from country of origin labeling, it does not automatically qualify the product to be marked "Made in U.S.A." The "substantial transformation" is simply the initial hurdle faced by manufacturers wishing to place a domestic origin marking on their product.

1 Levine v. BIC USA, Inc. (2007) 2007 U.S. Dist. LEXIS 60952.

2 This limited exception applies to automobiles, textiles, and wool and fur products.

3 These federal regulations include the Tariff Act, 19 U.S.C. §1304, U.S. Customs Service Regulations, and 19 CFR 134. 11.

Federal Trade Commission Rules on "Made in U.S.A" Claims

In 1997, the Federal Trade Commission issued an Enforcement Policy Statement on the appropriate use of the "Made in U.S.A." marking.[4] According to the FTC, to mark a product "Made in U.S.A.," the product must be "all or virtually all" made in the United States. This means that the significant parts and processing that go into the product must be of U.S. origin.

California's "Made in the U.S.A" Statute

Under California law, it is unlawful to mark a product "Made in U.S.A." when the product or any article, unit, or part thereof, has been entirely or substantially made, manufactured, or produced outside of the United States.[5] Colgan v. Leatherman[6] and Benson v. Kwikset[7] are the leading California cases interpreting this statute.

Conclusion

There are numerous steps a product manufacturer can take to avoid labeling a product with an erroneous statement of origin. If you are unsure about the proper statement of origin marking, you should contact an attorney who is knowledgeable about the U.S. Customs Service rules and regulations. For a more detailed analysis of this article, please contact the author.

4 62 C.F.R. §63756 (1997).

5 Cal. Bus. & Prof. Code §17533.7.

6 Colgan v. Leatherman (2006) 135 Cal.App.4th 663

7 Benson v. Kwikset (2007) 152 Cal.App.4th 1254

Lily Toubi
714.427.7510
ltoubi@swlaw.com