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California Apparel Makers Concerned About 'Made in USA' Label

By Deborah Belgum | Thursday, November 6, 2014

A recent federal judge's ruling is making California apparel makers think twice about how they label their garments in the future.

Should their tags say "Made in USA" if they use domestic goods or should their tags read "Made in USA From Imported Fabrics"?

The concern comes from several class-action lawsuits and legal letters filed against Los Angeles denim makers last spring challenging the accuracy of their labels. (*California Apparel News* first reported the class-action suits in a July 17 story that can be found here: www.apparelnews.net/news/2014/jul/17/controversy-over-made-in-label/.) The lawsuits stated that many clothing items were improperly labeled because most of their raw materials were imported from Europe or Asia even though the jeans were cut and sewn in California. Many premium-denim companies mark their garments as "Made in USA" even though most of their fabric comes from Italy, Turkey or Japan.

On Oct. 27, U.S. District Judge Dana Sabraw in San Diego denied a motion to dismiss one of the lawsuits filed against the denim company AG, formerly called AG Adriano Goldschmied, and against Nordstrom over a pair of AG jeans sold at Nordstrom with a "Made in USA" label.

The judge's ruling means the case can move to trial. At the heart of the cases is whether a more liberal federal regulation prevails over the more strict California regulation, which states using foreign fabric and components doesn't mean a label can say "Made in USA" even if it is sewn in the United States. Sabraw ruled that the two regulations can co-exist and the lawsuit can move forward.

"Usually if you have a conflicting federal and state law, then the federal law preempts," said international-law attorney Elise Shibles of Sandler, Travis & Rosenberg in San Francisco. "But the court held that the two laws don't conflict with each other. It is not impossible to comply with both of them."

California law prohibits any product from being labeled "Made in USA" if that product has been entirely or substantially made or produced outside the United State.

So if a pair of blue jeans were cut and sewn in Los Angeles but were made of imported fabric, zipper, buttons and thread, it would have to say "Made in USA of Imported Fabric, Zipper, Buttons and Thread." The federal regulation is more liberal and would mandate you say "Made in USA of Imported Fabric."

That means jeans sold in California may have to carry the "Made in USA With Imported Fabrics" plus other component tags, but jeans sold outside of California could have a "Made in USA of Imported Fabric" tag.

If the jeans were cut and sewn in the United States and made of U.S. fabric and imported zippers, button and



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thread, the federal label would read "Made in USA," but the California label would have to say "Made in USA of U.S. Fabric and Imported Zipper, Button and Thread."

"The reaction to this is huge," said **Ilse Metchek, president of the California Fashion Association**, the Los Angeles trade group representing apparel companies and the entities that serve them.

"It's a real troublesome decision. I don't think it is finished yet," said Richard Wortman, a customs attorney with Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt. For apparel manufacturers shipping goods across the country, they would have to set aside separate labels for California customers to comply with the California law.

Lonnie Kane, president of Los Angeles apparel maker Karen Kane, said that if he uses imported fabric in his sewn-in-Los Angeles garments, that information is included in the tag information about the garment's origin. But he feels the California law should be changed to coincide with the federal regulation.

That was attempted when Assembly Bill 858 was introduced to the California legislature in 2011 by Assembly Member Brian Jones (R-Santee). The bill would have provided that a product made all or virtually all in the United States, within the meaning of a specified policy statement of the Federal Trade Commission, which wrote the federal regulation, would be deemed made within the United States. But the bill did not pass.

This variation between state and federal regulations is nothing new for California. For years, apparel manufacturers have had to employ two different standards when considering the chemical content or toxicity of products—such as clothing, accessories or shoes—sold in California.

The state's Proposition 65 maintains that a product's chemical exposure to consumers should be kept below an approved limit. If it is not, then warning labels must be attached to non-compliant products. Most other states do not have these kinds of stringent regulations. "Once again, California is the tail that is wagging the dog," Wortman said.