

November 2015

## "PROTECT YOURSELF"

### CALIFORNIA LEGISLATION: Update on "Made in USA"

#### Class Action & Watch-Dog Groups Looking for New Targets

##### **Background:**

California's strict law required manufacturers and marketers of all types who wanted to make a country of origin claim to adopt dual sets of packaging and labeling materials – one for California and one for the rest of the country.

**On September 1 2015**, California amended a portion of the Business & Professions Code known as the "Made in the U.S.A." law. This amendment relaxes California's standard for merchandise labeled as "Made in the U.S.A.".

The law now recognizes that merchandise made, manufactured, or produced in the United States can be labeled "Made in the U.S.A." even if it includes parts from outside of the United States. **Merchandise can be labeled "Made in the U.S.A." "if all of the articles, units, or parts of the merchandise obtained from outside the United States constitute not more than 5 percent of the final wholesale value of the manufactured product."**

Additionally, merchandise can be labeled "Made in the U.S.A." "if the manufacturer makes a showing that **it cannot produce or obtain a certain article, unit, or part**" **within the United States for reasons other than cost** and that the article, unit, or part does not constitute more than ten (10) percent of "the final wholesale value of the manufactured product."

*The **California Fashion Association** was a strong proponent of revisions to the law and was instrumental in the legislation that resulted in the changes*

Manufacturers and marketers will need to keep careful records to be sure their products meet the new California standards. This should help reduce the number of instances companies must create one set of labeling materials for California and another set for the rest of the country. It should reduce the 'shakedowns' from private so-called consumer interest groups.

##### **Warning:**

Some organizations (such as the "Made in the USA Foundation") previously took advantage of California's strict "Made in the USA" law, and are **searching out new targets**.

They are now focusing their extortion efforts on **alleged deceptive adverting of geographic origin of products**. They are using the California Consumer Legal Remedies Act (CLRA) and the federal Textile Products Identification Act; the CLRA allows individuals and private organizations to file suits against businesses for violations as "private Attorneys General"; the Textile Products Identification Act is

enforced by the Federal Trade Commission (“FTC”) but is being used by these organizations as a guideline as to what is or is not ‘deceptive’.

**Be aware:**

The CLRA includes a prohibition on, “Using deceptive representations or designations of geographic origin in connection with goods or services.” The Textile Products Identification Act requires “**Country of Origin in mail order advertising**”: *“When a textile fiber product is advertised in any mail order catalog or mail order promotional material, the description of such product shall contain a clear and conspicuous statement that the product was either made in U.S.A., imported, or both”.*

The Made In the USA Foundation claims that advertisements for **clothing in print media or on the internet that do not disclose either that the goods are made in the USA or imported are per se deceptive and violate the CLRA**. They are demanding thousands of dollars in penalties from the advertisers to avoid a lawsuit under the CLRA.

While the law may not technically require that the origin of textile products be disclosed in all advertising, it is recommended that if the clothing is produced outside the US or partly constructed outside the US or includes imported fabric, the information **be disclosed in print or electronic media** as a preventative measure. The simple word “imported” or “imported fabric” should suffice.

**For More Information:**

**Laura P. Worsinger, Senior Counsel** | lworsinger@dykema.com  
**DYKEMA GOSSETT, L.L.P** | 333 South Grand Avenue, Suite 2100  
Los Angeles, CA 90071 | (213) 457-1744  
www.dykema.com