

Commercial and Competition Law Update – Can Any Product Claim to Be Made in America Anymore?

It's not safe to say your products are made in America anymore. Black & Decker's Kwikset subsidiary just proved that point.

Kwikset manufactures locks and advertised them as "Made in the USA." But it turned out that two inconsequential screws came from Taiwan, and a component used in some locks was assembled in Mexico, a fact Kwikset disclosed in small print.

California law requires that every component of every product sold in that state as "American made" must have been made substantially in the United States from parts made here as well. In a long-awaited decision with far-reaching implications for manufacturers and resellers, the California Court of Appeals recently refused to change its earlier ruling that Kwikset violated California law by selling as "Made in the USA," locks that either used the two screws from Taiwan or contained a component assembled in Mexico. See *Benson v. Kwikset*, No. G030956, 2005 Cal. App. Lexis. 208 (Feb. 10, 2005).

"If you are thinking, 'I'll just avoid California,' that won't work," says Scott Hansen, a member of Reinhart's Product Distribution and Franchise Team. According to Hansen, the Federal Trade Commission adopted a similar rule in 1998, and it applies to almost every product sold anywhere in the United States. In fact, the FTC nabbed Kwikset even before the California courts took their pound of flesh. On December 28, 2000, the FTC announced that both Black & Decker and Kwikset had agreed to stop representing their products as "Made in the USA" unless "all or virtually all of the components . . . are made in the United States, and the labor in manufacturing the products is performed in the United States."

Hansen explained that the FTC is empowered to prevent "deceptive or unfair trade practices," and views "made in the USA" marketing claims as deceptive advertising unless the parts and labor to make the product actually came from the United States. What's more, Hansen added, the FTC can attack advertising even if it thinks "made in the USA" is merely implied. Depending on the context, this can include using American flags, outlines of the U.S. map or claims of "American quality."

If you want to sell your products as American made, [Commercial and Competition](#)

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[Law Group](#) can help make sure you have enough "American content" to satisfy these laws. Members of the Team can also help you if you think your competitors are misrepresenting their products as "Made in the USA."

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