

**Manufacturers Beware:  
"Made in USA" Really Means "Made in USA" in California**

California law unequivocally provides that to qualify for a "Made in USA" labeling designation in the United States, the product must be 100% made in the USA. As such, each component part that comprises a "good" sold in California must be "Made in USA" to qualify for a "Made in USA" designation in California. Specifically, California law provides:

**California Business & Professions Code  
17533.7.** *It is unlawful for any person, firm, corporation or association to sell or offer for sale in this State any merchandise on which merchandise or on its container there appears the words "Made in U.S.A." "Made in America," "U. S.A.," or similar words when the merchandise or any article, unit, **or part thereof**, has been entirely or substantially made, manufactured, or produced outside of the United States.*

This relevant California statute was upheld by California courts – most recently in *Benson v. Kwikset Corporation* (2007) 152 Cal.App.4th 1254 and in the seminal case of *Colgan v. Leatherman* (2006) 135 Cal.App.4th 663.

*Benson v. Kwikset Corporation* (2007):

An individual (James Benson) initiated litigation, both individually and on behalf of general public, against Kwikset Corporation ("Kwikset"), its parent corporation, and a related defendant entity ("Defendants"). Kwikset manufactures and sells locksets, which can include deadbolts, doorknob sets, door lever sets, and door handle sets. It has several plants located throughout the United States, plus one in Mexico. Between 1996 and 2000, Kwikset manufactured and sold 35 different varieties of locksets. Defendants attached labels to these products stating "Made in U.S.A.," "All American Made," or made similar representations. Some of these products, however, included screws and pins made in Taiwan, a latch assembly that was sub-assembled at Defendants' Mexico plant, and/or foreign made parts and assemblies.

The lawsuit sought restitution and injunctive relief pursuant to California's unfair competition and false advertising laws, alleging that Defendants violated statutory provisions prohibiting marketing or sale of merchandise with "Made in U.S.A." or similar labels when merchandise either contained foreign-made parts or involved foreign manufacture. After a December 2001 trial, the California Superior Court (trial court) found that the defendants marketed products in packaging that contained misleading country of origin labels and entered judgment in favor of plaintiff. The trial court also enjoined defendants' use of inaccurate labels and ordering them to allow retailers and distributors to return

mislabeled products for either a refund or replacement.

On Appeal, the Court confirmed the trial court's ruling as to the violation of Section 17533.7 to be proper ["Application of these principles confirms the trial court read the statute correctly."] The Court ruled that Section 17533.7 regulates the use of "Made in U.S.A." and similar labeling only on merchandise that is "made, manufactured, or produced." "The words 'made, manufactured, or constructed' cover almost everything which [human] skill ... can make out of raw materials." *United States v. Anderson* (S.D.Cal.1942) 45 F.Supp. 943, 949.

The Court further reasoned that if the merchandise consists of separate, identifiable components, then Section 17533.7 requires that "any article, unit, or part" of the merchandise to be "entirely or substantially made, manufactured, or produced" domestically to qualify for use of a "Made in U.S.A." or similar label. Section 17533.7 The Court gave these terms their usual and ordinary meanings as follows: (1) "Article" includes "a material thing: item, object," or "a thing of a particular class or kind as distinct from a thing of another class or kind"; (2) "Unit" means "a single thing ... that is a constituent and isolable member of some more inclusive whole" and "a piece or complex of apparatus serving to perform one particular function" (*id.* at p. 2500); and (3) "Part" means "a unit ... held to constitute with one or more other units something larger: constituent ... an essential portion or integral element of something."

In conclusion, the Court held that "[i]n light of these definitions, when merchandise consists of two or more physical elements or pieces, Section 17533.7 also applies to any distinct component of merchandise that is necessary for its proper use or operation."

*Colgan v. Leatherman* (2006):

An individual (Ken Colgan) initiated class action litigation against Leatherman Tool Group, Inc. ("Leatherman"). Leatherman is a leading manufacturer of hand-held, multi-component, multi-function tools comprised of components such as screwdrivers, pliers, saws, files, and corkscrews. Leatherman offered for sale and sold 22 tool products in California during the class period and represented on the tool products, on packaging, and in advertising that the tools were made in the United States. Significant working parts of the tools were cast, formed, hardened, cut, forged, polished or machined in various foreign countries. The plier jaws that were investment cast in Mexico had the letters "USA" stamped onto the jaws themselves.

The Superior Court (trial court) granted summary adjudication in favor of Plaintiff and against Leatherman. On appeal, the appellate court affirmed the granting of summary adjudication against Leatherman and confirmed that Leatherman violated the False Advertising Law and the CLRA because, as a matter of law, there was sufficient manufacturing of components abroad so as to make Leatherman's representations that its products were made in the United

States deceptive. The evidence presented was sufficient, without further extrinsic evidence (such as a consumer survey) to establish that Leatherman's representations were deceptive. The Court also affirmed summary adjudication against Leatherman as to violation of Section 17533.7 (and thus a violation of California Unfair Competition Law) by selling products represented as "Made in U.S.A." "when the merchandise or any article, unit, or part thereof, has been entirely or substantially made, manufactured, or produced outside of the United States." Section 17533.7. That a product may have been designed, processed and assembled in the United States does not preclude the conclusion that a "part" of the product was "substantially made, manufactured or produced" outside the United States. As a matter of law, Leatherman's products were substantially made outside the United States.

**Conclusion:**

Many companies mistakenly market their products in California with the misguided understanding that if a *de minimis* amount of a products' component parts are manufactured outside of the United States, then it is permissible to market the product in California as "Made in USA." This understanding is incorrect as the *de minimis* standard is federal standard under the FTC that does not apply to the Section 17533.7 analysis. The California courts in both *Leatherman* and *Kwikset* made it abundantly clear that "Made in USA" really means "Made in USA" in California.

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