Beware of the Risks of Using Misleading “Made in U.S.A.” Labels or Similar “False” Product Markings

A recent decision by the California Supreme Court creates further potential exposure for manufacturers and distributors of products containing non-U.S. materials or components and which are incorrectly described as being “Made in U.S.A.” or by similar misleading statements.

On January 27, 2011 the California Supreme Court ruled in a case involving Kwikset Corporation (whose products contained a small portion of non-U.S. components) that consumers had legal standing to file lawsuits and collect damages under California’s Unfair Competition Laws if they can truthfully allege that they were deceived by a product’s “Made in U.S.A.” label in spending money to purchase the product and would not have purchased it otherwise.

In light of past experiences with similar type claims providing legal standing for “false marking” claims and lawsuits, where a court ruling has “opened the floodgates” to individual and class action claims for “false marking,” it is quite likely that, unless reversed or modified, the California Supreme Court’s ruling in the Kwikset case will encourage and lead to many similar lawsuits and burdens for companies whose products do not comply with appropriate labeling or marking statutes. For example, following several Federal Court rulings last year with respect to “false marking” of products claiming to be “patented” (when the patents had, in fact, expired), there have been numerous lawsuits filed by individuals and companies who claim the legal right to recover damages (up to $500 for each individual unit of a falsely marked product) in situations where a product (or its packaging) is marked with expired or non-existent patent claims, and the product is no longer covered/protected by any unexpired patents.

With regard to the “Made in U.S.A.” labels or markings, the rules and regulations adopted under Customs laws and by the Federal Trade Commission with respect to product marking, designation, advertising and product promotion can be quite complex and confusing, especially where the product contains components which are manufactured or sourced outside the United States, even where the entirety of the product is assembled within the United States. The Federal Trade Commission has been active in pursuing enforcement actions with respect to improperly marked products. Now, as a result of the California Supreme Court’s ruling (which may be followed by courts in other states that have similar unfair competition statutes or so-called “consumer fraud” statutes), manufacturers and distributors of products need to be even more careful with regard to the description, labeling, marketing and advertising of their products where claims such as “Made in U.S.A.” (or where expired patent markings or references) are used.

The attorneys in Masuda Funai’s Distribution/Sales Practice Group have experience in the application and use of such markings and compliance with Federal and State laws. For further information, please contact Jerrold E. Fink, Joseph S. Parisi, Edward J. Underhill, Steven L. Katz, or any one of the other attorneys in Masuda Funai’s Distribution/Sales Practice Group.
About the Distribution & Sales Group

The Distribution & Sales Group at Masuda Funai provides legal advice and counseling to clients engaged in the manufacture, distribution, sale and service of products. We assess the legal issues and complications associated with product manufacture, sales, distribution, marketing and pricing. We help our clients reduce the significant risks involved in the manufacture, advertising and sale of their products, their relations with distributors, dealers and sales representatives, and the complexities of antitrust laws. We provide crucial counseling and representation in the area of product warranties and products liability and assist our clients in reducing their risks and legal expenses in these areas.

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Masuda Funai is a full-service law firm representing international and domestic companies operating and investing in the United States. Our 45 attorneys located in Chicago, Schaumburg and Los Angeles counsel clients in every aspect of business, including establishing, acquiring, and financing operations; ownership, development and leasing of real estate; transfer of overseas employees to the U.S.; employment, labor, and benefits counseling and dispute resolution; intellectual property, copyright and trademark; business litigation; creditors' rights and business risk management; structuring the distribution and sale of products and services throughout the U.S.; and estate planning and administration.