

## Standing Under California § 17200 Only Requires Injury From Business Practice

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Drawing upon recent California Supreme Court rulings, the U.S. Court of Appeals for the Federal Circuit reversed a California federal district court's dismissal of claims under the **state's unfair competition law**, finding the court had wrongly dismissed the claims for lack of standing. ***Allergan, Inc. et. al. v. Athena Cosmetics, Inc. et. al.***, Case No. 10-1394 (Fed. Cir., May 24, 2011) (Gajarsa, J.).

Allergan, a manufacturer of an FDA-approved treatment for inadequate eyelash growth, Latisse®, brought suit alleging the defendants had infringed or induced infringement of multiple patents. Allergan also claimed defendants violated **California's unfair competition law, U.C.L. §§17200 et seq.** With respect to the latter claim, Allergan contended that defendants' manufacture, sale or marketing of hair/eyelash growth products that had not been approved by the FDA or state health regulators constituted unfair competition under the California statute.

The defendants countered that Allergan lacked standing because the statute only protects persons who have suffered a loss that is eligible for restitution. Restitution is a remedy that seeks to restore the status quo; it requires the plaintiff to have had an ownership interest in the money or property it seeks to recover. The district court found Allergan had no such interest in lost profits or market share because defendants' profits derived from third-party consumers. Allergan appealed; its patent claims were stayed pending appeal of the unfair competition claim.

The Federal Circuit rejected the district court's narrow view of the California unfair competition statute. While acknowledging that California voters had approved Proposition 64 to restrict standing requirements and address abuses that had resulted in frivolous lawsuits, the Court noted that the California Supreme Court's decisions in two cases that were decided while the Allergan appeal was pending (***Kwikset Corp. v. Superior Court of Orange County*** and ***Clayworth v. Pfizer, Inc.***), demonstrated that Proposition 64 did not limit standing solely to injuries compensable by restitution. Instead, a plaintiff need only allege an injury in fact that was the result of the unfair business practice. Applying this reasoning, the Court held that Allergan had adequately pleaded a claim under U.C.L. § 17200.

Importantly, the Court also rejected the defendants' claims that standing under U.C.L. §17200 required a plaintiff to have direct business dealings with a defendant. The Court denied that

**Proposition 64 added any such “business dealings” requirement to U.C.L. §17200 claims.**

**Practice Note:** The *Allergan* decision demonstrates that while standing to file suit under §17200 is more limited than it was in the past, §17200 remains a potent tool that litigants can use to challenge a competitor’s practices.

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