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J Brand Hit with California Putative Class Action Suit Alleging False Origin Claim

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A proposed class action suit against J Brand, an industry leader in the fashion world that sells its jeans and apparel to countless retailers, was recently filed in California over alleged false origin claims. At the center of the suit is the plaintiff's allegation that J Brand manufactures, markets and sells its "Skinny Stretch" style of jeans with the claim that the goods are "Made in California, USA."

California has long had one of the strictest "Made in USA" label requirements. The state law previously prohibited labeling products with an unqualified "Made in USA" claim if any portion of the underlying product was made outside the United States. However, in 2015, California amended its statute to allow companies to label their products "Made in USA" if less than 5 percent of the product's wholesale value is from foreign components, or if less than 10 percent of the wholesale value is from foreign components which are unavailable in the United States. As stated in our previous client alert, California's amendment to the California Business and Professions Code for origin designation labeling has provided a degree of certainty in what has previously been an uncertain landscape.

In this case, the plaintiff claims that the J Brand jeans are comprised of more than 5 percent imported material that could have been sourced domestically. Specifically, the plaintiff states that the fabric, thread, buttons, zipper subassembly and rivets are made of imported material.

Although there were a significant number of false origin labeling cases prior to the amendment of the law[1], with the filing of the J Brand suit, it appears that the trend may continue. It will be interesting to see whether a dispute exists between J Brand and the plaintiff over the definition of "wholesale value." Guidance under the previous law indicated that the term "wholesale value" was to be defined as "the sum of direct and indirect material costs and direct and indirect labor costs." Even if the prior guidance applies in the J Brand case, the term "indirect costs" is subject to interpretation in calculating the 5 percent and 10 percent thresholds. Considering that this could be outcome determinative as to whether there is a violation of the California law, it is likely to be a significant issue in the case.

The crux of the damages allegation is that foreign-made products are often inherently of "lower quality than their U.S.-made counterparts." Plaintiff claims that the "Skinny Stretch" style jeans are often of inferior quality due to J Brand's decision to include foreign-made components. Due to the

allegedly inferior quality, the plaintiff alleges that the J Brand apparel are “less reliable, and fail more often than if the product was truly made from 100% American-made components.” The plaintiff then states that the “Skinny Stretch” style of jeans is not worth the purchase price paid.

Even if the plaintiff is able to prove that any allegedly foreign components of the “Skinny Stretch” style of jeans that are available domestically account for more than 5 percent of the product’s wholesale value, it will be interesting to see how the plaintiff can prove that the J Brand “Skinny Stretch” style of jeans “fail more often” than if the product was made entirely (or at least 94.99 percent) in the USA. Do the jeans split more often, get holes in the knee area, or does the zipper allegedly break more often because of the foreign components? Moreover, it will be interesting to see how the plaintiff intends to prove that the jeans were not worth the purchase price paid and measure the damages that might be attributable to the allegedly inferior jeans. Plaintiffs in these cases face significant hurdles in terms of quantifying any purported damages, particularly on a class-wide basis. This latest case will face some clear challenges out of the gate, and there will be a number of defenses to class certification should the case progress to that stage. It will be closely monitored by both the plaintiffs’ and defense bar to see how it plays out in court.

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[1] *See, e.g., Paz, et al. v. AG Adriano Goldschmied Inc., et al.*, No. 3:14-cv-01372 (S.D. Cal.); *Clark v. Citizens of Humanity LLC, et al.*, No. 3:14-cv-01404 (S.D. Cal.); *Hofmann v. True Religion Apparel, Inc.*, No. 37-14-41658 (Cal. Sup. Ct.).

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