Client Alert

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Governor Brown signs bill returning California to mainstream on "Made in USA" labeling and providing a potential avenue to end pending litigation

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A bill signed last week by California Governor Jerry Brown gives manufacturers and retailers a good argument that pending litigation over "Made in USA" labeling should be dead in its tracks. That is the key takeaway from the new bill, known as SB 633, which allows products to be marketed in California as "Made in USA" even if they have not been entirely manufactured in the United States with domestic components.

SB 633 amends section 17533.7 of California's Business and Professions Code to replace California's old "Made in USA" labeling standard — which requires that 100 percent of the product be manufactured in the United States — with a more lenient standard. Effective January 1, 2016, businesses can label products as "Made in USA" if the finished product is made, manufactured, or produced in the United States, and parts manufactured outside the United States constitute no more than 5 percent of the final wholesale value of the finished product. That threshold rises to 10 percent if the manufacturer can show that it cannot make the foreign components in the United States or obtain them from a domestic source.

Because SB 633 effectively repeals the old "100 percent" labeling standard, manufacturers and retailers defending ongoing "Made in the USA" litigation may be able to use the change in law to obtain a dismissal. Under the "statutory repeal" rule articulated by the California Supreme Court in *Younger v. Superior Court*, 21 Cal. 3d 102, 109 (1978), it is "well settled . . . that an action wholly dependent on statute abates if the statute is repealed without a saving clause before the judgment is final." A lawsuit alleging violation of section 17533.7 is an "action wholly dependent on [a] statute" and SB 633 was enacted without a saving clause. Accordingly, defendants may be able to argue that, under the statutory repeal rule, lawsuits concerning "Made in USA" claims that comply with the new law should not be allowed to proceed.

In addition to offering potential relief from current litigation (and likely curtailing new litigation), SB 633 should also ease the burden of complying with "Made in USA" labeling rules nationwide by aligning California law with labeling rules already used by the Federal Trade Commission and all remaining 49 states. Under those rules, manufacturers and retailers may use a "Made in USA" claim for products with a negligible amount of foreign components as long as "virtually all" of the product is made in the United States.

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