

**Demurrer, CCP 430.10
Motion to Strike, CCP 435, 436**

KOTTARAS v. JANSSEN PHARMACEUTICA

LC 069 427

CALENDAR: DEPT. "Z"

DATE: 12/23/04

RELIEF: DEMURRER TO ENTIRE COMPLAINT

MP: D, JANSSEN PHARMACEUTICA, INC.

D, JOHNSON & JOHNSON

RP: P, ELEANOR KOTTARAS

RULING:

Sustain Demurrer without leave to amend as to the entire Complaint b/c P does not have standing to sue. The Proposition 64 amendments to the Unfair Competition Law, B&P 17200 and 17500, and the False Advertising Law, preclude P from prosecuting "private attorney general" claims on behalf of the "general public."

Standing is a procedural issue and not a cause of action. (*Killian v. Millard* (1991) 228 Cal.App.3d 1601, 1605). Where the change is procedural, "[t]here is then no problem as to whether the Legislature intended the changes to operate retroactively." (*Aetna Casualty & Surety Co. v. Industrial Acci. Com.* (1947) 30 Cal.2d 388, 394).

In addition, Proposition 64 contains no express declaration of substantive retroactive application. It expresses no intent to postpone its effect in requiring the procedural change of standing. On the contrary, it reveals voters' intent to reach back and affect all pending litigation and regardless of dates of underlying occurrences. Specifically, the preamble states that the purpose is to "eliminate frivolous lawsuits," and the initiative forbids prosecution by persons who have not suffered harm, such as P. Such statements make no provision for delaying application as to preexisting causes of action.