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April 28, 2009

The Honorable Ronald M. George,
Chief Justice, and Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, California 94102

Re: Kwikset Corp. v. S.C. (Benson), No. S171845
Amicus Curiae Letter Supporting Petition for Review

Honorable Justices of the California Supreme Court:

Pursuant to the California Rules of Court, rule 8.500(g), the California Teamsters Public Affairs Council (CTPAC) submits this letter in support of the petition for review in this case. CTPAC represent over 200,000 working men and women throughout California. Our working families depend on California's consumer protection statutes to protect us in the marketplace. We therefore have an interest in the just and accurate interpretation of California's consumer protection statutes, including the Unfair Competition Law (UCL) (Bus. & Prof. Code, § 17200 et seq.) and the False Advertising Law (FAL) (Bus. & Prof. Code, § 17500 et seq.).

Our union's members also have a particularly strong interest in the vigilant enforcement of, and deterrence provided by, California's "Made in U.S.A." statute (Bus. & Prof. Code, § 17533.7), which specifically guards against false advertising relating to consumer products' country of origin and is privately enforced through the UCL. The "Made in U.S.A." statute not only protects American consumers, it also protects American jobs. The statute provides a critical incentive to companies to manufacture their products in America rather than outsource their parts and labor from foreign countries. Thousands of companies reject outsourcing, choosing instead to make their products in this country and to thereby be eligible to proudly display the "Made in U.S.A." label. Those companies that do so and legally qualify their products for the "Made in U.S.A." label deserve to be rewarded for supporting American jobs and the American economy. They deserve to enjoy a competitive advantage due to their laudable and legal conduct, not to suffer a competitive disadvantage due to other companies' false advertising.

As working class consumers who highly value the "Made in U.S.A." label, we take great umbrage at the conduct of Kwikset Corporation and Black & Decker Corporation, which took advantage of the importance of the "Made in U.S.A." label to many consumers to reap greater profits. Although we find Kwikset's decision to close a major manufacturing plant in Anaheim and outsource much of its labor to Mexico regrettable, we do not take issue with its business decision. But we do take issue with its continued use of the "Made in U.S.A." label long after that move. Its additional labeling of its products as "All American Made" and "All American Made and Proud Of It" is not merely deceptive, it is downright offensive.

Kwikset and Black & Decker have been found to have violated the "Made in U.S.A." statute and engaged in false advertising and they can never change that legal conclusion. The court of appeal's decision, however, would wipe out any consequences for Kwikset and Black & Decker as a result of their violations. The court of appeal's decision, by requiring a showing of damages or defects to establish standing to bring a false advertising case, essentially would end all private enforcement of the "Made in U.S.A." statute and, more importantly, all deterrence arising from the statute. Asking average working Americans to hire lawyers and experts willing to conduct and pay for market studies and expert analyses even to bring a false advertising case to court is unduly burdensome, if not impossible in most cases.

The court of appeal's new requirement to show market damages or product defects also misses the whole point of the "Made in U.S.A." statute. American consumers choose to buy products bearing the "Made in U.S.A." label because they want to buy American-made products and support American jobs, regardless of how those products strictly compare to other available products in terms of market value or quality. Many citizens would even pay more for products with the "Made in U.S.A." label than other similar products of higher value or quality, making it impossible to show they "paid too much" for the falsely labeled products. Similarly, the existence of a defect also is irrelevant (as well as impossible to prove in many cases). The absence of a product defect does not change the fact that consumers are unfairly deceived into buying products falsely labeled as "Made in U.S.A."

The court of appeal in this case (Fourth Appellate District, Division Three) clearly did not give any regard for the important protections of the "Made in U.S.A." statute and apparently does not like false advertising cases in general. It used Proposition 64 as a pretext to end these cases. But no one who voted for Proposition 64 had been given any indication they would lose the right to stop a company from falsely advertising its products as "Made in U.S.A." so long as the products had a sufficiently high market value and quality. No one even remotely contemplated that a company like Kwikset could shut a California manufacturing plant, ship hundreds of jobs to Mexico, save tens of millions of dollars in labor costs due to the replacement of American workers with cheap foreign labor, and yet continue to advertise its products as "Made in U.S.A." without being subject to a consumer UCL or FAL action.

The injustice of the court of appeal's decision is magnified by the fact that Kwikset had been found liable and ordered to comply with an injunction that not only prevented the company from further "Made in U.S.A." labeling violations but also required the company to notify all of its retailers so

they could get the products off the shelves. This was highly valuable relief and a critical precedent for all California companies and citizens. The court of appeal would throw that relief and precedent out the door. Instead of vindicating the statute, the court would eviscerate it.

Unless the Court takes this case, the court of appeal's decision would send the dangerous message to all companies selling products in California that they can falsely label their products as "Made in U.S.A." without concern for any consumer UCL action so long as their products are not defective. The court of appeal's decision also would send the message that companies can unfairly compete with their rivals by using the "Made in U.S.A." label undeterred by the prospect of consumer actions. But the most serious message the court of appeal's decision would send is that companies can be free to outsource American jobs and still reap the benefits of falsely labeling their products as "Made in U.S.A." We fear that by eliminating both the "Made in U.S.A." label's incentive for companies to manufacture products in this country and the "Made in U.S.A." statute's deterrence function, the court of appeal's decision would cause many more companies to outsource their jobs to foreign countries, further exacerbating the severe economic situation facing the State of California and this nation.

For these reasons and those stated in the petition, we believe it is critical for the Court to grant review now, in this case, to address the meaning of the new UCL and FAL standing requirements and to prevent the "Made in U.S.A." statute from becoming a dead letter. The threshold question of who may enforce these important statutes in private litigation is a matter of widespread public interest. Moreover, in just a few years, the standing rules codified by Proposition 64 have vexed the lower courts and the federal judiciary in a confusing array of case law. Review by this Court will promote clarity and uniformity in the standing requirements that is, to date, lacking. The Court should also grant review to disapprove the hostility to consumer protection exhibited in many of the decisions, including the opinion on review here.

Respectfully submitted,



Barry Broad

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of Sacramento, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 1127 11th Street, Suite 501, Sacramento, CA 95814.

2. That April 28, 2009, declarant served the **AMICUS CURIAE LETTER SUPPORTING PETITION FOR REVIEW** by depositing a true copy thereof in a United States mailbox at Sacramento, CA in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.

3. That there is a regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 28th day of April, 2009, at Sacramento, CA


Marsi Newman

KWIKSET (AMICUS CURIAE)

Service List - 4/24/2009 (200-026P)

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