"Made in the USA" Labels Can Backfire

By David C. Baker, Esq.

The "Made in the USA" label is a popular attribute for many goods marketed and sold not only in the United States but throughout the world. Although it may seem strange to many Americans, products that are made in the U.S. are extremely popular in many countries, including China and India, two of the most populous emerging consumer states in the world. The labels themselves are relatively cheap and easy to affix to products, and virtually every company located in the U.S. would like to affix them to their products. However, certain industries are highly regulated when it comes to the use of "Made in the USA" labels. Those industries, including textile and clothing manufacturers, must adhere to stringent rules and regulations when it comes to sourcing materials and the assembly of final products or risk disaster.

In 1996, when "Made in the USA" labels became fashionable, many companies which actually did source and produce their products entirely within the confines of the United States, learned that competitors were sourcing some or all of their products or product components from overseas where labor and production costs were often times much cheaper. Others, they realized, were using a substantial portion of product parts and components manufactured overseas to assemble them in the United States and then pass them off as "Made in the USA." This resulted in legislation including the Textile Products Identification Act, which expressly provides that unless a product sold in the United States contains "all or substantially all components actually manufactured and assembled

in the United States," then they cannot make this claim. Unfortunately, the Federal Trade Commission, which is tasked with enforcing these rules and regulations, does not have a bright line test to determine what constitutes "all or substantially all." This means that manufacturers, distributors and retailers must make a judgment call.

The decision to use "Made in the USA" labels can be very profitable for a company. However, if used in error, the labels also can subject a company to draconian penalties such as unfair competition lawsuits filed by competitors under the Lanham Act and shipment seizures by U.S. Customs officials at the borders. Manufacturers hoping to use the "Made in the USA" label on some or all of their goods would be wise to carefully consider the ramifications of mislabeling and, if in doubt, retain the services of competent IP legal counsel to offer timely advice. Similar restrictions apply to the automobile industry, the wool industry, and the electronics industry.

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Breach of Contract Victory

By C. William Dahlin, Esq.

A reminder to HK&C clients and friends - even with the best contract in the world, you may find your wallet lighter in proving you did nothing wrong.

A multi-day court trial was held in Orange County Superior Court to litigate the claim of a debtor that a pawn shop "stole" $800,000 worth of rare coins. HK&C represented the pawn shop owner. The debtor asserted that the contracts entered into between the debtor and the pawn shop were invalid, unenforceable and did not reflect the true intent of the parties - that the rare and valuable coins left with the pawn shop were merely there to be sold on a consignment basis.

The overwhelming evidence supported the position of the pawn shop and demonstrated a long course of dealing where the debtor had pawned other rare coins, and later redeemed them with interest. The debtor failed to redeem the rare coins, failed to advance or tender the monies due, so under their contract the coins became the property of the pawn shop. The pawn shop owner gave the debtor many additional months to repay in an attempt to accommodate the debtor. However, the $124,000 advanced by the pawn shop was never tendered.

The Trial Court rejected the claims of the debtor/borrower and enforced the written contract between the pawn shop and the debtor - a victory for the HK&C client. Pawn shops are heavily regulated and the ability of a pawn shop owner to rely upon their written contract which allows them to become the legal owner of collateral when the loan is not repaid, is critical to the economic viability of such a business.

Bill Dahlin is a Partner with HK&C and has practiced law for over two decades. Mr. Dahlin's practice focuses on property rights. He may be reached at bdahlin@hkclaw.com or (714) 432-8700 x. 306.

Thinking about Starting Your Own Business by Becoming a Franchisee?

by Daniel T. Rudderow, Esq

If you are thinking about starting your own business by becoming a franchisee - congratulations! Franchisees often face many challenges and legal issues before they purchase a franchise. Getting started "on the right foot" may mean the difference between success or unexpected, costly expenses.

The first challenge for a prospective franchisee is to review and understand the "Franchise Disclosure Document" or "FDD" provided by the franchisor. This document can be long and complex, containing a mountain of legal and financial information for the franchisee to consider and evaluate. The FDD includes information about past or current litigation associated with the franchise, estimated costs of purchase and operations, franchisor support, restrictions on what you can sell, financial performance representations and other key information required in an FDD.

The next challenge is to review and understand the "Franchise Agreement." The Franchise Agreement closely governs the way your business will operate, discloses what fees are to be paid to the franchisor, imposes restrictions on business activities you can engage in outside the franchise and provides a contingency plan if you die or become seriously ill. Working with one of our franchise attorneys in reviewing and negotiating the terms to this important document before you buy a business is likely to avoid multiple problems, misunderstandings and associated legal costs down the road.

Other documents required for buying and operating the franchise should be reviewed with an attorney as well. For example, if you need retail or office space to operate the franchise, you will need to negotiate and sign a lease for the business' premises. You may also need to sign an array of other documents with the franchisor, including confidentiality and deposit agreements.

In addition to this work on the front end in reviewing and executing documents for your business, you will need to decide on the formation of the best legal entity, i.e., corporation, LLC, partnership, etc. to own and operate your franchise business.

Please call HK&C Attorney Dan Rudderow at 714-432-8700 for more information or legal assistance pertaining to franchisees.

Daniel T. Rudderow is a partner with the law firm of Hart, King & Coldren. His practice includes representing various franchisees in California and throughout the United States. For more information, Mr. Rudderow may be reached at 714-432-8700 x. 354 or via email at drudderow@hkclaw.com.

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