

Lands' End Requests Dismissal of "Made in U.S.A." Class Action After Reimbursing Plaintiff

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Last week, Lands' End tried a second time to dismiss a "Made in U.S.A." class action with the novel argument that, because the company had already reimbursed the plaintiff for the necktie she purchased, she is not injured and lacks standing.

As background, in October 2014, plaintiff Elaine Oxina filed the putative class action in the U.S. District Court for the Southern District of California, alleging that Lands' End falsely represented that the necktie she purchased, which label states "Made in China," was "Made in USA," in violation of the Lanham Act and California's Consumer Legal Remedies Act, Unfair Competition Law, and "Made in U.S.A." statute. In June 2015, the court granted Lands' End's motion to dismiss the first amended complaint (which omitted the Lanham Act claim), concluding that Ms. Oxina lacked standing to bring the case under California's "Made in U.S.A." statute because Lands' End made the alleged "Made in U.S.A." representation online, and the statute applies only to "Made in U.S.A." claims that appear on the merchandise or the merchandise's container.

Not easily discouraged, Ms. Oxina filed a second amended complaint at the end of July, alleging that Lands' End violated California's consumer protection statutes in general by deceptively advertising a product labeled as "Made in China" as "Made in U.S.A." Additionally, she claims that she sent Lands' End a letter in June demanding that the company initiate a corrective advertising campaign and alert affected customers, but it did not comply with her request.

In the motion to dismiss filed last week, Lands' End argues that, because the company sent Ms. Oxina a refund check for the purchased necktie, plus interest, eight days before she filed the second amended complaint, she lacks the injury necessary to file an action for damages, and therefore lacks Article III standing. Although "Made in U.S.A." class action lawsuits are popular in California right now, it will be interesting to see whether Lands' End's argument passes muster, and whether companies can avoid an alleged violation – of California's "Made in U.S.A." statute or its consumer protection statutes in general – by simply reimbursing the aggrieved consumer.