

LITIGATION ALERT

CALIFORNIA'S PROPOSITION 64 SIGNIFICANTLY AMENDS THE REQUIREMENTS TO BRING ACTIONS UNDER CALIFORNIA'S UNFAIR COMPETITION LAW AND FALSE ADVERTISING LAW



For years, many people have complained that California's Unfair Competition Law (the UCL), Cal. Bus. & Prof. Code §§ 17200, et seq., made it too easy to pursue expensive lawsuits over trivial matters. On November 2, 2004, California voters amended the UCL by passing Proposition 64 (59 to 41 percent). The amendments curtail the ability to bring certain UCL actions, and apply to both pending and future actions.

Effects of Proposition 64

Proposition 64 amends the UCL and California's false advertising law (Cal. Bus. & Prof. Code §§ 17500)¹ by adding two significant requirements to UCL actions.

First, Proposition 64 imposes a new standing requirement. The plaintiff must suffer "injury in fact *and* loss of money or property as a result of" the alleged violation of the UCL. That means that technical violations of statutes that cause no economic injury no longer give rise to UCL claims.

Second, Proposition 64 mandates that UCL actions on behalf of others can only be brought as class actions, unless such claims are brought by the attorney general, district attorney, county counsel, city attorney or city prosecutor.

Proposition 64 Is Effective Immediately

Article I, section 10(a) of the California Constitution provides that "[a]n initiative statute or referendum approved by a majority of votes thereon takes effect the day after the election

¹ For convenience, we will refer to the changes as amending the "UCL," even though the same changes also apply to false advertising claims.

unless the measure provides otherwise.” Nothing in Proposition 64 provides an alternative effective date. Thus, the amendments to the UCL are now in effect.

Proposition 64 is Retroactive and Applies to All Pending Actions

Although no reported decision has yet addressed the issue, there are three separate reasons why Proposition 64 applies to all pending actions: (1) the amendments are to a statutory right, so they are presumptively retroactive, (2) because Proposition 64 just imposes new standing and class action requirements, it is “procedural” and thus would apply retroactively and (3) information in the Voters’ Pamphlet regarding Proposition 64 indicates that the electorate intended the amendments to apply to existing lawsuits.

We are currently litigating cases about Proposition 64’s retroactivity.

CONTACT INFORMATION

If you have any questions about Proposition 64, please contact:

Rex S. Heinke310.229.1030rheinke@akingump.comLos Angeles
 Jessica M. Weisel.....310.229.1055jweisel@akingump.com.....Los Angeles

Austin Brussels Dallas Houston London Los Angeles Moscow
 New York Philadelphia Riverside Riyadh (Affiliate) San Antonio San Francisco Washington, D.C.