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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

DAVID PAZ, an individual and on  
behalf of all others similarly situated,  
  
Plaintiff,  
  
vs.  
  
AG ADRIANO GOLDSCHMEID,  
INC., a California corporation, et al.,  
  
Defendants.

CASE NO. 14cv1372 DMS (DHB)  
**ORDER DENYING MOTION TO  
DISMISS COMPLAINT**

This case comes before the Court on the motion of Defendants AG Adriano Goldschmeid, Inc. (“AG”) and Nordstrom, Inc. to dismiss Plaintiff’s Complaint. Plaintiff filed an opposition to the motion, and Defendants filed a reply. For the reasons set out below, the Court denies Defendants’ motion.

**I.  
BACKGROUND**

This putative class action case concerns the sale and marketing of Defendant AG’s products. AG is a designer and manufacturer of denim jeans products for men and women. (Compl. ¶ 6.) It sells its products through its own retail stores, online and through other high end retailers such as Defendant Nordstrom. (*Id.*)

One of AG’s products is “The Protégé” brand jean. (*Id.*) This product, like many of AG’s other products, is marked with a “Made in the U.S.A.” label. (*Id.* ¶ 19.) Plaintiff alleges that on May 16, 2014, he purchased a pair of “The Protégé” brand jeans

1 at a Nordstrom store in San Diego, California. (*Id.*) Plaintiff alleges he relied on this  
2 representation when purchasing the jeans, and that he “believed at the time he  
3 purchased THE PROTÉGÉ that he was supporting U.S. jobs and the U.S. economy.”  
4 (*Id.* ¶ 20.)

5 Plaintiff alleges, however, that the jeans “actually contain[ ] component parts  
6 made outside of the United States.” (*Id.*) Specifically, he alleges the fabric, thread,  
7 buttons, rivets, and/or certain subcomponents of the zipper assembly of the jeans (and  
8 presumably all other offending AGAG apparel products) are manufactured outside the  
9 United States. (*Id.* ¶ 15.)

10 In light of this alleged disparity, Plaintiff filed the present case on behalf of “all  
11 persons in the United States who purchased one or more of Defendants’ AGAG apparel  
12 products during the relevant four-year statutory time period that bore a ‘Made in the  
13 U.S.A.’ country of origin designation but that contained foreign-made component  
14 parts[.]” (*Id.* ¶ 26.) He also alleges claims on behalf of a subclass of “all of  
15 Defendants’ California customers who purchased AGAG apparel products that were  
16 labeled as ‘Made in the U.S.A. OF IMPORTED FABRIC’ that contained foreign-made  
17 component parts beyond the fabric (e.g., rivets, thread, buttons, and/or subcomponents  
18 of the zipper assembly) during the relevant four-year statutory time period[.]” (*Id.* ¶  
19 27.) In the Complaint, Plaintiff alleges the following claims for relief: (1) violation of  
20 California’s Consumer Legal Remedies Act, California Civil Code § 1750, *et seq.*, (2)  
21 violation of California’s Unfair Business Practices Act, California Business and  
22 Professions Code § 17200, *et seq.* and (3) violation of California Business and  
23 Professions Code § 17533.7. In response to the Complaint, Defendants filed the present  
24 motion.

## 25 II.

### 26 DISCUSSION

27 Defendants move to dismiss the Complaint in its entirety on the ground  
28 Plaintiff’s claims are preempted by the Federal Trade Commission Act (“FTCA”) and

1 the Textile Fiber Products Identification Act (“TFPIA”). Plaintiff disputes that his  
2 claims are preempted by either statute.

3 “The preemption doctrine stems from the Supremacy Clause. It is a ‘fundamental  
4 principle of the Constitution [ ] that Congress has the power to preempt state law.’”  
5 *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1022 (9<sup>th</sup> Cir. 2013), *cert. denied by*  
6 *Arizona v. Valle del Sol, Inc.*, \_\_\_ U.S. \_\_\_, 134 S.Ct. 1876 (2014), (quoting *Crosby v.*  
7 *Nat’l Foreign Trade Council*, 530 U.S. 363, 372 (2000)). “There are ‘three classes of  
8 preemption’: express preemption, field preemption and conflict preemption.” *Id.*  
9 (quoting *United States v. Alabama*, 691 F.3d 1269, 1281 (11<sup>th</sup> Cir. 2012)).

10 In this case, Defendants rely on the doctrine of conflict preemption. With  
11 conflict preemption, “state law is naturally preempted to the extent of any conflict with  
12 a federal statute.” *Id.* at 1023 (quoting *Crosby*, 530 U.S. at 372). Conflict preemption  
13 “has two forms: impossibility and obstacle preemption.” *Id.* (citing *Crosby*, 530 U.S.  
14 at 372). “Courts find impossibility preemption ‘where it is impossible for a private  
15 party to comply with both state and federal law.’” *Id.* (quoting *Crosby*, 530 U.S. at  
16 372). “Courts will find obstacle preemption where the challenged state law ‘stands as  
17 an obstacle to the accomplishment and execution of the full purposes and objectives of  
18 Congress.’” *Id.* (quoting *Arizona v. United States*, \_\_\_ U.S. \_\_\_, 132 S.Ct. 2492, 2501  
19 (2012)) (internal quotation marks omitted).

20 Analysis of a preemption claim “must be guided by two  
21 cornerstones of [the Supreme Court’s] jurisprudence. First, the purpose  
22 of Congress is the ultimate touchstone in every pre-emption case. Second,  
23 [i]n all pre-emption cases, and particularly in those in which Congress has  
24 legislated ... in a field which the states have traditionally occupied, ... we  
start with the assumption that the historic police powers of the State were  
not to be superseded by the Federal Act unless that was the clear and  
manifest purpose of Congress.”

25 *Id.* (quoting *Wyeth v. Levine*, 555 U.S. 555, 565 (2009)) (internal quotation marks  
26 omitted). As the parties asserting preemption, Defendants carry the burden of proof.  
27 *Entergy Nuclear Vermont Yankee, LLC v. Shumlin*, 733 F.3d 393, 414 n.21 (2d Cir.  
28 2013).

1 **A. The FTCA**

2 The FTC was established to prevent corporations “from using unfair methods of  
3 competition in or effecting commerce and unfair or deceptive acts or practices in or  
4 affecting commerce.” 15 U.S.C. § 45(a)(2). The specific provision of the FTCA at  
5 issue in this case is 15 U.S.C. § 45a, which concerns labels on products. It states, in  
6 pertinent part:

7 To the extent any person introduces, delivers for introduction, sells,  
8 advertises, or offers for sale in commerce a product with a “Made in the  
9 U.S.A.” or “Made in America” label, or the equivalent thereof, in order to  
10 represent that such product was in whole or in substantial part of domestic  
11 origin, such label shall be consistent with decisions and orders of the  
12 Federal Trade Commission issued pursuant to section 45 of this title. This  
13 section only applies to such labels. Nothing in this section shall preclude  
14 the application of other provisions of law relating to labeling.

15 15 U.S.C. § 45a.

16 After this statute was passed, the FTC issued an Enforcement Policy Statement  
17 “to give general guidance on making and substantiating U.S. origin claims.” “Made in  
18 USA” and Other U.S. Origin Claims; Notice, 62 Fed. Reg. 63,755, 63,765 (Dec. 2,  
19 1997). In that Statement, the FTC:

20 set[ ] forth the requirement that where a product is labeled or advertised  
21 as “Made in USA,” the marketer should possess and rely upon a  
22 reasonable basis that the product is all, or virtually all, made in the United  
23 States. A product that is “all or virtually all” made in the United States is  
24 described typically as one in which all significant parts and processing that  
25 go into the product are of U.S. origin, *i.e.*, where there is only a *de*  
26 *minus*, or negligible, amount of foreign content.

27 *Id.* If further guidance is necessary, the FTC will consider three factors: “whether the  
28 final assembly or processing of the product took place in the United States; the portion  
of the total manufacturing cost of the product that is attributable to U.S. parts and  
processing; and how far removed from the finished product any foreign content is.” *Id.*

29 The parties agree this section of the FTCA allows for the use of a “Made in  
30 U.S.A.” label even if the product includes or contains material from a foreign country.  
31 They also agree that California Business and Professions Code § 17533.7 does not  
32 allow the use of a “Made in U.S.A.” label unless the product and all articles, units and

1 parts thereof were “entirely or substantially made, manufactured, or produced” in the  
2 United States. *See* Cal. Bus. & Prof. Code § 17533.7.<sup>1</sup> The parties agree these statutes  
3 set out different standards for the use of a “Made in U.S.A.” label, but disagree as to  
4 whether that difference results in conflict preemption.

5 As stated above, conflict preemption exists ““where it is impossible for a private  
6 party to comply with both state and federal law.”” *Valle del Sol*, 732 F.3d at 1032  
7 (quoting *Crosby*, 530 U.S. at 372). Defendants argue it is impossible for them to  
8 comply with these two statutes when it comes to products like those at issue here,  
9 namely products that contain some foreign content, because the federal law would allow  
10 them to use the “Made in U.S.A.” label while the state law would not as parts of the  
11 subject merchandise were allegedly made outside of the United States. The Court  
12 agrees that with these types of products California law prohibits the use of a “Made in  
13 U.S.A.” label whereas federal law does not. However, the Court disagrees that this  
14 results in conflict preemption.

15 Although the laws set out different standards for the use of “Made in U.S.A.”  
16 labels, it would not be impossible for Defendants to comply with both laws. Outside  
17 California, Defendants could use the “Made in U.S.A.” labels, but inside California,  
18 they could not. This may be burdensome for Defendants, but it is not impossible for  
19 them to do so. *See Greater Los Angeles Agency on Deafness, Inc. v. Cable News*  
20 *Network, Inc.*, 742 F.3d 414, 429-30 (9<sup>th</sup> Cir. 2014) (quoting *National Ass’n of the Deaf*  
21 *v. Netflix, Inc.*, 869 F.Supp.2d 196, 205 (D. Mass. 2012)) (internal quotation marks  
22 omitted) (“To the extent that the federal captioning scheme and the DPA may require  
23 different captioning requirements or deadlines, these differences do not ‘create a  
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26 <sup>1</sup> Cal. Bus. & Prof. Code § 17533.7 states in its entirety: “It is unlawful for any  
27 person, firm, corporation or association to sell or offer for sale in this State any  
28 merchandise on which merchandise or on its container there appears the words ‘Made  
in U.S.A.,’ ‘Made in America,’ ‘U.S.A.,’ or similar words when the merchandise or any  
article, unit, or part thereof, has been entirely or substantially made, manufactured, or  
produced outside of the United States.” Cal. Bus. & Prof. Code § 17533.7.

1 positive repugnancy between the two laws’ or otherwise demonstrate an irreconcilable  
2 conflict between federal law and the DPA because CNN can comply with both.”)

3 Defendants also argue California law creates an obstacle to the accomplishment  
4 and execution of the FTCA.<sup>2</sup> They assert one of the purposes of the FTCA “was to give  
5 the FTC authority to determine the circumstances in which use of [“Made in U.S.A.”]  
6 labels would be misleading or not misleading.” (Reply Br. at 8.) They also argue the  
7 statute evidences Congress intent to preempt the field of “Made in U.S.A” labels.<sup>3</sup>

8 The Court agrees with Defendants that one purpose of the FTCA was to give the  
9 FTC authority to regulate “Made in U.S.A.” labels. However, delegating that authority  
10 to the FTC is not the same as depriving other agencies or states from exercising that  
11 same authority. The general provision of the FTCA gives the FTC the power to direct  
12 and prevent all manner of persons and entities “from using unfair methods of  
13 competition in or affecting commerce and unfair or deceptive acts or practices in or  
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15 <sup>2</sup> It is worth noting the California law and the federal law are meant to serve the  
16 same purpose, namely to prevent the deceptive marketing and promotion of products  
17 as “Made in U.S.A.” See *Colgan v. Leatherman Tool Group, Inc.*, 135 Cal. App. 4<sup>th</sup>  
18 663, 689 (2006) (stating polices underlying the federal and California law are the same).  
19 Accurate labeling of this information, in turn, allows consumers to make informed  
20 decisions about whether their purchases “support fellow Americans” or “harm the  
21 American manufacturing base[.]” 62 Fed. Reg. at 63758-59. These corresponding  
22 benefits are echoed in the California law. See *Kwikset Corp. v. Superior Court*, 51 Cal.  
23 4<sup>th</sup> 310, 329 (2011) (quoting *Colgan*, 135 Cal. App. 4<sup>th</sup> at 689) (stating purpose of  
24 California law “is to protect consumers from being misled when they purchase  
25 products in the belief that they are advancing the interests of the United States and its  
26 industries and workers.”) Given that the purposes of the statutes are the same, it is not  
27 apparent on the present facts how compliance with one would be an obstacle to the  
28 other.

<sup>3</sup> Defendants deny any reliance on field preemption, but their argument sounds  
23 otherwise. Defendants’ reluctance to argue field preemption is understandable as it  
24 would require a showing that Congress, acting within its proper authority, has  
25 determined the field of “Made in U.S.A.” labels “must be regulated by its exclusive  
26 governance.” *Arizona v. United States*, 132 S.Ct. at 2501. As stated by the Supreme  
27 Court, “The intent to displace state law altogether can be inferred from a framework of  
28 regulation ‘so pervasive ... that Congress left no room for the States to supplement it’  
or where there is a ‘federal interest ... so dominant that the federal system will be  
assumed to preclude enforcement of state laws on the same subject.’” *Id.* (quoting *Rice*  
*v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). Neither of these inferences is  
reasonable given the statutory language at issue here (15 U.S.C. § 45a) or the general  
subject matter of the statute (consumer protection), which has traditionally been a  
matter of state concern. *Chae v. SLM Corp.*, 593 F.3d 936, 944 (9<sup>th</sup> Cir. 2010).

1 affecting commerce.” 15 U.S.C. § 45(a)(2). However, states are free to exercise that  
2 power, as well, as evidenced by the many state consumer protection laws, including  
3 those in California. Indeed, “consumer protection laws have traditionally been in state  
4 law enforcement hands.” *Chae*, 593 F.3d at 944. Thus, “we start with the assumption  
5 that the historic police powers of the States were not to be superseded by the Federal  
6 Act unless that was the clear and manifest purpose of Congress.” *Rice*, 331 U.S. at 230  
7 (citations omitted). The delegation of authority to the FTC to regulate “Made in  
8 U.S.A.” labels does not demonstrate a “clear and manifest purpose” to supersede state  
9 laws on such labels.

10 Defendants’ argument that the statute evidences Congress’s intent to preempt the  
11 field of “Made in U.S.A.” labels is, likewise, unpersuasive. In support of this argument,  
12 Defendants rely on that portion of the statute that reads: “This section only applies to  
13 such labels. Nothing in this section shall preclude the application of other provisions  
14 of law relating to labeling.” 15 U.S.C. § 45a. Defendants read this portion of the  
15 statute as indicating that Congress intended this statute to be the exclusive authority on  
16 “Made in U.S.A.” labels while leaving other labeling concerns open to other  
17 regulations. However, this portion of the statute can also be read as an indication that  
18 Congress intended this statute to apply only to “Made in U.S.A.” labels as opposed to  
19 other kinds of labels, *e.g.*, qualified U.S. origin claims, claims about specific processes  
20 or parts and comparative claims. *See* 62 Fed. Reg. at 63,769-70. Contrary to  
21 Defendants’ suggestion, there is nothing in this portion of the statute that indicates  
22 Congress intended to preempt the field of “Made in U.S.A.” labels.

23 In light of the above, the Court finds Defendants have failed to show Plaintiff’s  
24 claims are preempted by the FTCA.

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28 **B. The TFPIA**

1 In addition to arguing preemption under the FTCA, Defendants argue Plaintiff's  
2 claims are preempted by the TFPIA. Specifically, Defendants rely on 15 U.S.C. §  
3 70b(b)(5), which states:

4 Except as otherwise provided in this subchapter, a textile fiber product  
5 shall be misbranded if a stamp, tag, label, or other means of identification,  
6 or substitute therefor authorized by section 70c of this title, is not on or  
affixed to the product showing in words and figures plainly legible, the  
following: ...

7 (5) If it is a textile fiber product processed or manufactured in the United  
8 States, it be so identified.

9 15 U.S.C. § 70b(b)(5). Defendants argue, as they did with the FTCA, that it is  
10 impossible for them to comply with this federal statute and California law.

11 Defendants argue the TFPIA *requires* them to use a "Made in U.S.A." label even  
12 if the garment includes foreign-made materials, whereas California law *prohibits* the  
13 use of a "Made in U.S.A." label unless the entire garment is made entirely or  
14 substantially in the U.S.A. The Court agrees with the latter statement, but disagrees  
15 with the former.

16 Although the TFPIA requires that textile fiber products processed or  
17 manufactured in the United States be so identified, it does not require an unqualified  
18 "Made in U.S.A." label if the product is made, either in whole or in part, of imported  
19 materials. Rather, in that case the TFPIA requires that the label disclose those facts, *i.e.*,  
20 that it state "Made in USA of imported fabric." *See* 16 C.F.R. § 303.33(a)(3). Thus,  
21 contrary to Defendants' suggestion, the TFPIA does not require labeling that is  
22 prohibited by California law. As with the FTCA, it is not impossible for Defendants  
23 to comply with both statutes. They can simply indicate on the label that their products  
24 were "Made in U.S.A. of imported fabric and components," or something similar that  
25 accurately describes where the parts of the product and the product as a whole were  
26 sourced and made.

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1 Defendants argue this is not a viable option because California law prohibits the  
2 use of “Made in U.S.A.” on a label even if it is qualified with other language. In other  
3 words, Defendants assert a qualified label such as “Made in U.S.A. of imported fabric  
4 and components” would violate California law regardless of the qualifying language  
5 because the label still states the product is “Made in U.S.A.” In support of this  
6 argument, Defendants rely on the statute and case law.<sup>4</sup> However, neither supports  
7 Defendants’ argument.

8 On its face, the statute makes it unlawful to sell or offer for sale in California any  
9 merchandise using the words “Made in U.S.A.” or similar words if “the merchandise  
10 or any ... part thereof [ ] has been entirely or substantially made, manufactured, or  
11 produced outside of the United States.” Cal. Bus. & Prof. Code § 17533.7. The statute  
12 is silent on qualified labels, such as “Made in U.S.A. of imported fabric and  
13 components,” and thus fails to provide any guidance on whether such labels would  
14 violate the law.

15 Case law also fails to provide any guidance as the labels at issue in the cases were  
16 unqualified, *i.e.*, they simply stated the products were “Made in U.S.A.” *See Kwikset*,  
17 51 Cal. 4<sup>th</sup> at 317; *Colgan*, 135 Cal. App. 4<sup>th</sup> at 672.

18 The lack of guidance on qualified labels, however, does not preclude the Court  
19 from using its common sense. California Business and Professions Code § 17533.7 is  
20 part of California’s False Advertising Law (“FAL”), which prohibits false and  
21 misleading advertising statements, in general. *See* Cal. Bus. & Prof. Code § 17500. If  
22 a product is made in the U.S.A. with imported fabric and components, and the label  
23 accurately reflects that, then there is no falsity or misrepresentation. The product is

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25 <sup>4</sup> Defendants also rely on Plaintiff’s Complaint, which they read as targeting all  
26 products labeled with the phrase “Made in U.S.A.,” whether that phrase is qualified or  
27 not. (Reply Br. at 5 n.3.) The Court does not read Plaintiff’s Complaint to be so broad.  
28 Rather, it appears Plaintiff is focused on those products that include an unqualified  
“Made in U.S.A.” label where the product includes component parts that were either  
sourced or manufactured overseas and products that include a label stating “Made in  
U.S.A. of imported fabric” when the products include parts, other than just the fabric,  
that were sourced or manufactured overseas. Plaintiff does not appear to be targeting  
products that include a qualified “Made in U.S.A.” label regardless of its accuracy.

1 what it is described to be, “Made in U.S.A. of important fabric and components.” The  
2 words “Made in U.S.A.” or “U.S.A.” do not make the label inherently misleading, and  
3 they must be read in context. If the purpose of the false advertising law is to protect  
4 consumers from fraud and deceit, it is difficult to see how that purpose is not served,  
5 or is affirmatively violated, by a label that accurately describes where a product and all  
6 its component parts are sourced and manufactured. Defendants’ argument to the  
7 contrary, that section 17533.7 prohibits such labels, even when they are accurate and  
8 not misleading, strains the purpose of the statute, the FAL in general and common  
9 sense.

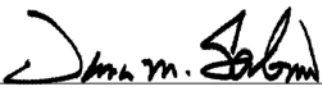
10 In light of the above, the Court finds Defendants have failed to show Plaintiff’s  
11 claims are preempted by the TFPIA.

12 **III.**  
13 **CONCLUSION**

14 In sum, Defendants have not shown Plaintiff’s claims are preempted by either the  
15 FTCA or the TFPIA. Accordingly, the Court denies Defendants’ motion to dismiss.

16 **IT IS SO ORDERED.**

17 DATED: October 27, 2014

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20 HON. DANA M. SABRAW  
21 United States District Judge  
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