



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Consumer Protection
Division of Enforcement

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July 23, 2019

VIA EMAIL

Zack Hadžismajlović, Esq.
McCarter & English, LLP
Worldwide Plaza
825 Eighth Avenue
31st Floor
New York, New York 10019

Dear Mr. Hadžismajlović:

We received your submissions on behalf of Kenall Manufacturing Co. (“Kenall” or the “Company”). During our review, we discussed concerns that marketing materials may have overstated the extent to which Kenall products are made in the United States. Specifically, although most Kenall light fixtures are assembled in the United States and meet the domestic manufacturing requirements of the Buy American Act (“BAA”), 41 U.S.C. §§ 8301-8305¹, they incorporate significant imported content.²

As discussed, unqualified U.S.-origin claims in marketing materials – including claims that products are “Made,” “Built,” or “Manufactured” in the USA – likely suggest to consumers that all products advertised in those materials are “all or virtually all” made in the United States.³

¹ BAA establishes price preferences for domestic end products and construction materials in government acquisitions, and defines those terms as they are used in that limited context. *See* 48 CFR § 25.003 (stating that for purposes of BAA, “domestic end product[s]” and “domestic construction material[s]” include, among other things, certain manufactured products or materials where either the cost of the components mined, produced, or manufactured in the United States exceeds 50% of the cost of all components, or the product or material is a commercially available off-the-shelf item).

² Kenall also offers a small number of wholly imported products.

³ Federal Trade Commission, *Issuance of Enforcement Policy Statement on “Made in USA” and Other U.S. Origin Claims*, 62 Fed. Reg. 63756, 63768 (Dec. 2, 1997). Additionally, beyond express “Made in USA” claims, “[d]epending on the context, U.S. symbols or geographic references, such as U.S. flags, outlines of U.S. maps, or references to U.S. locations of

The Commission may analyze a number of different factors to determine whether a product is “all or virtually all” made in the United States, including the proportion of the product’s total manufacturing costs attributable to U.S. parts and processing, how far removed any foreign content is from the finished product, and the importance of the foreign content or processing to the overall function of the product.

The Commission has noted that “[w]here a product is not all or virtually all made in the United States, any claim of U.S. origin should be adequately qualified to avoid consumer deception about the presence or amount of foreign content. In order to be effective, any qualifications or disclosures should be sufficiently clear, prominent, and understandable to prevent deception.”⁴

To avoid deceiving consumers, Kenall implemented a remedial action plan to update and qualify its representations. This plan included: (1) conducting internal training on country-of-origin claims; (2) removing unqualified U.S.-origin claims from marketing materials, including the company website, social media accounts, and product labels; (3) removing Google Ads or other search engine optimization tags that incorporated unqualified claims; (4) communicating changes to agents and distributors; (5) adopting new processes to review marketing materials; and (6) introducing updated qualified claims where appropriate, including qualified claims relating to Kenall’s BAA compliance.

As discussed, it is appropriate for the Company to promote the fact that it employs workers and performs certain processes in the United States, provided that marketing materials do not overstate the extent to which Kenall’s products are made in the United States. It is also appropriate for Kenall to make truthful claims that products meet BAA requirements, as long as those claims are either: (1) limited to marketing materials available only to government purchasers, or (2) qualified to avoid consumer deception. As you know, FTC staff is available to work with companies to craft qualified claims that serve the dual purposes of conveying non-deceptive information to consumers and highlighting work done in the United States.

Based on Kenall’s actions and other factors, the staff has decided not to pursue this investigation any further. This action should not be construed as a determination that there was no violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. The Commission reserves the right to take such further action as the public interest may require. If you have any questions, you can reach me at (202) 326-2377.

Sincerely,



Julia Solomon Ensor
Staff Attorney

headquarters or factories, may, by themselves or in conjunction with other phrases or images, convey a claim of U.S. origin.” *Id.* Truthful claims that products are BAA-compliant also likely convey unqualified “Made in USA” claims to non-government purchaser consumers.

⁴ *Id.* at 63769.