



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

Bureau of Consumer Protection
Division of Enforcement

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June 20, 2024

VIA EMAIL

Richard Benson, Esq.
Director of Legal and EHS
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Dear Mr. Benson:

We received your submissions on behalf of Lubrication Specialties, LLC (“LSI” or the “Company”). During our review, we discussed concerns that general marketing materials may have inadvertently overstated the extent to which LSI’s fuel and oil additives, lubricants, and other branded products are made in the United States. Specifically, among other things, certain LSI products incorporate significant imported ingredients or materials, and LSI offers a small line of imported apparel products promoting its brand.

Unless the advertised products are specifically covered by other labeling laws or rules, unqualified U.S.-origin claims in marketing materials – including claims products are “Made” or “Built” in the USA – likely suggest to consumers that the advertised products are “all or virtually all” made in the United States.¹ Depending on context, 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 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 product’s overall function. The “all or virtually all” standard is codified in the Made in USA Labeling Rule, 16 C.F.R. § 323 (the “MUSA Labeling Rule”).²

¹ FTC, *Issuance of Enforcement Policy Statement on “Made in USA” and Other U.S. Origin Claims*, 62 Fed. Reg. 63756, 63768 (Dec. 2, 1997) (the “Policy Statement”).

² Effective August 13, 2021, it is a violation of the MUSA Labeling Rule to label any covered product “Made in the United States,” as the MUSA Labeling Rule defines that term, unless the final assembly or processing of the product occurs in the United States, all significant processing that goes into the product occurs in the United States, and all or virtually all ingredients or components of the product are made and sourced in the United States. *See* <https://www.federalregister.gov/documents/2021/07/14/2021-14610/made-in-usa-labeling-rule>. Pursuant to 15 U.S.C. § 45(m)(1)(A), the Commission may seek civil penalties of up to \$51,744 per MUSA Labeling Rule

In some instances when a product is last substantially transformed in the USA but contains more than *de minimis* imported content, a marketer may be able to make a qualified claim that conveys truthful information about U.S. processes or content without implying the product is “all or virtually all” made in the United States. A marketer may make any qualified claim that is truthful and substantiated, including one that generally alerts consumers to the existence of foreign content in the product (*e.g.*, “Made in USA of Imported Parts”), one that identifies the particular countries from which the parts came (“Made in USA from French and Korean Parts”), or one that specifies the proportion of the product that comes from the U.S. (*e.g.*, “60% U.S. Content”).³

Alternatively, a marketer may advertise a product as “Assembled in USA” provided the product is last substantially transformed in the USA, its principal assembly takes place in the USA, and United States assembly operations are substantial.⁴ In most cases, marketers need not qualify “Assembled in USA” claims with information about the origin of the parts or materials the product contains. The FTC reminds marketers when a product is last substantially transformed abroad and thus required by Customs and Border Protection (“CBP”) to be marked with a foreign country of origin, “it would be inappropriate, and confusing,” to make a U.S. origin claim.⁵

Marketers should remain aware that different analyses or considerations may apply to products covered by specific labeling laws or rules. During our inquiry, LSI disclosed it sells a small number of wholly imported textile products on its website. These products include t-shirts and sweatshirts incorporating Company logos and insignias and are designed to promote the LSI brand.

Apparel products are generally covered by the Textile Fiber Products Identification Act, 15 U.S.C. §§ 70-70k (the “Textile Act”) and implementing Rules (the “Textile Rules”). Although U.S.-origin claims are optional for most products, products covered by the Textile Act and Rules are subject to mandatory country-of-origin labeling requirements, including requirements to disclose use of imported fabric.⁶ Moreover, the Textile Rules set forth specific factors for marketers to apply in deciding whether to mark a product as of U.S. origin, which differ from the “all or virtually all” analysis applied to claims for products in other categories.⁷ Finally, the Textile Act and Rules require marketers to disclose product origin in “mail order

violation.

³ *Id.* at 63769.

⁴ *Id.* at 63770.

⁵ *Id.*

⁶ *See* 16 C.F.R. §§ 303.15(b); 303.16 (requiring a “conspicuous and readily accessible [country of origin] label or labels on the inside or outside of the product”). Disclosure requirements apply regardless of whether products originated in the USA or abroad.

⁷ Specifically, 16 C.F.R. § 303.33 states that marketers need only consider the origin of materials that are one step removed from the particular manufacturing process. *See*, FTC, Threading Your Way Through the Labeling Requirements Under the Textile and Wool Acts, <https://www.ftc.gov/tips-advice/business-center/guidance/threading-your-way-through-labeling-requirements-under-textile>.

advertising,” including online materials.⁸

As discussed, it is appropriate for the Company to promote its commitment to American jobs and highlight U.S. processes. However, marketing materials should not state or imply products are wholly or partially made in the United States unless the Company can substantiate those claims. Additionally, LSI must comply with other labeling laws and rules where applicable. In response to our inquiry, LSI developed a comprehensive compliance and remedial action plan, which included the following steps: (1) removing unqualified claims from general marketing materials; (2) introducing qualified claims where appropriate; (3) confirming compliance with the Textile Act and Rules; (4) updating product labels, including by placing stickers over outdated claims until new packaging is available; (5) updating marketing videos, tradeshow displays, and other images; (6) communicating changes to its distribution network, including by providing updated dealer displays and detailed information on required changes, and (7) carefully monitoring dealer and distributor compliance.⁹

FTC staff members are available to work with companies to craft claims serving the dual purposes of conveying non-deceptive information and highlighting work done in the United States. Based on the Company’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 applicable law. The Commission reserves the right to take such further action as the public interest may require. If you have any questions, please feel free to call.

Sincerely,



Julia Solomon Ensor, Staff Attorney



Lashanda Freeman, Senior Investigator

⁸ 16 C.F.R. § 303.34 (advertising must contain “a clear and conspicuous statement that the product was either made in U.S.A., imported, or both”).

⁹ We note these efforts are ongoing, and LSI continues to monitor the marketplace and take all reasonable steps to ensure dealers and distributors remain in compliance.