



United States of America
FEDERAL TRADE COMMISSION

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VIA EMAIL

Holly A. Melton
Crowell & Moring LLP
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Dear Ms. Melton:

We received your submissions on behalf of Sleep Holdco, LLC and its operating entity, Brooklyn Bedding, LLC d/b/a “3Z Brands,” which operates a brand portfolio including Brooklyn Bedding, Helix, Birch, Bear, Nolah, and Leesa (“3Z Brands”). During our review, we discussed two sets of concerns. First, certain marketing materials available on social media may have overstated the extent to which certain 3Z Brands portfolio products are made in the United States. For example, certain 3Z Brands portfolio products, while assembled in the United States, contain imported components, but historical social media posts contained unqualified “Made in USA” claims. Second, we discussed certain concerns related to the Textile Fiber Products Identification Act, 15 U.S.C. § 70 et seq. (“Textile Act”), and implementing rules, 16 C.F.R. Part 303 (“Textile Rules”). Specifically, for some covered products, materials did not clearly and conspicuously display country-of-origin information.

In most instances, unqualified U.S.-origin claims in marketing materials—including claims products are “made” 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

Additionally, unqualified U.S.-origin claims in general marketing materials, including social media posts, likely suggest to consumers that *all* products advertised are made in the United States. As the Commission has explained, “marketers should not represent, either expressly or by implication, that a whole product line is of U.S. origin (e.g., ‘Our products are Made in USA’) when only some products in the product line are, in fact, made in the United States.”³

With respect to the Textile Act and Rules, certain 3Z Brands portfolio products, including pillows, sheets, and other bedding, are subject to mandatory country-of-origin labeling requirements, including requirements to disclose use of imported fabric. *See* 15 U.S.C. § 70b(a); 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”).⁴ The Textile Act also requires marketers to disclose product origin in “mail order advertising,” including online materials. *See* 15 U.S.C. § 70b(i); *see also* 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”).

To come into compliance with Section 5 of the FTC Act, 15 U.S.C. § 45(a) (“Section 5”), and the Textile Act and Textile Rules, 3Z Brands implemented a remedial action plan. This plan included: (1) removing broad and/or unqualified U.S.-origin claims from advertisements, including from historical social media posts; and (2) ensuring “mail order advertising” contains clear and conspicuous required origin information.

As discussed, it is appropriate for 3Z Brands to promote the fact that it designs and assembles mattresses and other products in the United States. However, marketing materials that cover products made from foreign and domestic parts must not overstate the extent to which 3Z Brands portfolio products are made in the United States. Additionally, 3Z Brands portfolio websites must make clear and conspicuous origin disclosures in compliance with the Textile Act and Textile Rules. FTC staff is available to work with companies to craft compliant claims that convey non-deceptive information to consumers and highlight work done in the United States.

Based on 3Z Brands’ 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 the Textile Act or Section 5. 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) 256-1507 or athornhill@ftc.gov.

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 violation.

³ Policy Statement, 62 Fed. Reg. 63756, 63768 n.111.

⁴ Disclosure requirements apply regardless of whether products originated in the USA or abroad.

Sincerely,

Abbey Thornhill Wallace
Abbey Thornhill Wallace
Staff Attorney

Lashanda Freeman
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