

ALERT

Under New FTC Rule, “Made in USA” Violators Will Face Monetary Penalties

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On Thursday, July 1, 2021, the U.S. Federal Trade Commission (FTC) finalized a rule that both formally adopts the agency’s longstanding guidelines for “unqualified” claims that a product has U.S. origin, and authorizes monetary penalties for violations.

The rule applies to product labels that indicate without qualification that a particular good, or a specified part of that good, was made in the United States unless the good/part is:

- Subject to final assembly or processing 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.

The rule applies not just to goods labeled with the specific phrase “Made in the United States,” but product labels that have the same essential meaning, such as “American-made,” “Crafted in USA,” etc.

The rule clearly applies to physical labels on a product or its packaging, but also extends to unqualified claims of U.S. origin that appear in any “seal, mark, tag, or stamp” in “mail order catalogs” and “mail order promotional materials.” Importantly, these catalogs/materials are defined not only to include printed advertisements, but advertisements disseminated telephonically, as well as by e-mail or other electronic means. As such, the rule appears to embrace claims on websites.

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The new rule does not differ substantively from the Commission's prior guidance regarding unqualified "Made in USA" claims. However, it will formally allow the Commission to seek monetary penalties of up to \$43,280 for each violation of the "Made in USA" standard.

Consumer advocates and domestic manufacturers have long sought more robust enforcement of the "Made in USA" standard, inclusive of monetary penalties for violations. In issuing its new rule, the Commission stated that the rule was spurred by "rampant Made in USA fraud" that harms both consumers seeking American-made products and the U.S. companies making such products. The Commission noted that its rule should "particularly benefit small businesses that rely on the Made in USA label, but lack the resources to defend themselves from imitators."

As noted above, the rule applies to "unqualified" claims of U.S. origin. It does not address what the Commission has long considered to be "qualified" claims, such as "Made in USA with Imported Materials," "Assembled in USA," or similar phrases that connote more limited U.S. content or processing than is conveyed by an unqualified claim. Such claims will remain subject to enforcement action pursuant to the Commission's general authority under Section 5 of the FTC Act.