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Made in USA: The FTC Moves Against Two More Retailers



Key Takeaway:

Companies making *Made in USA* claims should adhere to Federal Trade Commission guidance and state law, as such claims are likely to draw attention from regulators and class action plaintiffs. Additional detail on regulatory compliance can be found in our [prior post](#).

Deceptive *Made in USA* advertising continues to draw attention from the FTC. The FTC recently settled with hockey puck producer Patriot Puck and recreational equipment sister companies Sandpiper and PiperGearUSA regarding their allegedly false *Made in USA* claims. This brings the total number of FTC enforcement actions arising from misleading U.S.-origin claims to 25 since 1999, with six of those actions having been initiated since April 2017.^[1] FTC guidance makes clear that "a product advertised as Made in USA be 'all or virtually all' made in the U.S." To meet the "all or virtually all" standard, a product's final assembly or processing must take place in the United States and all significant parts and processing that go into the product must be of U.S. origin. Thus, the product should contain only a de minimis amount of foreign content. A manufacturer or advertiser must have "competent and reliable evidence to back up the claim that its product" meets this standard. If the product does not meet the "all or virtually all" standard, U.S.-origin claims must be adequately qualified. State law requirements often apply too. The FTC complaint alleges that Patriot Puck made unqualified origin claims such as "Made in America," "Proudly Made in the USA," "100% American Made!" and "The only American Made Hockey Puck!" even though its hockey pucks are wholly imported from China, with more than 400,000 pucks imported from China since January 2016. The FTC alleges that Sandpiper and PiperGearUSA made deceptive qualified origin claims in advertising materials and on packaging labels stating that nearly all their products were made in the United States when 95% of Sandpiper's products and 80% of PiperGearUSA's goods are imported or contain significant imported materials. The FTC also alleges that the companies obscured country-of-origin information on products in an attempt to deceive consumers. By a 4 to 1 vote, the FTC agreed to accept proposed settlement orders in both cases. Under the terms of these orders, all of the companies are barred from making *Made in USA* claims unless they can adequately substantiate them. In a dissenting statement, Commissioner

Chopra commented that enforcement remedies should be more aggressive and include redress, admissions, refunds, and corrective advertising, especially for violations involving egregious fraudulent *Made in USA* claims. In a concurring statement, Commissioner Slaughter stated that the non-monetary remedy in the proposed settlement order is sufficient in this case, but that monetary penalties may be appropriate in future actions, particularly if consumers are shown to have paid more for purchases believing that they were receiving products with U.S.-origin benefits. The FTC decisions can be found [here](#) and [here](#).

[1] See Statement of Commissioner Rebecca Kelly Slaughter Regarding the Matters of Nectar Sleep, Sandpiper/PiperGear, and Patriot Puck, fn. 1(September 12, 2018), https://www.ftc.gov/system/files/documents/public_statements/1407368/182_3038_nectar_sandpiper_patriot_rks_and_j

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