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FTC Gives Teeth to Made in USA Enforcement



Earlier this month the Federal Trade Commission formally [codified](#) its long-standing Made in USA guidelines into a formal rule that will go into effect August 13, 2021.

The law is consistent with prior guidelines:

- It prohibits advertisers from making unqualified "U.S.-origin" claims unless certain conditions are met: (1) Final assembly or processing of the product occurs in the United States; (2) all significant processing for the product occurs in the United States; and (3) all or virtually all of the product's ingredients or components are made and sourced in the United States.
- It applies not only to express "Made in USA" claims but also to implied claims, e.g., representation that a product or service is "made," "manufactured," "built," "produced," "created," "crafted," etc. in the "United States," "America," or any other terms that convey an unqualified U.S.-origin claim.
- It applies to claims made on a broad range of marketing mediums. Namely, in addition to covering claims made on a "seal, mark, tag, or stamp," the rule also covers "mail order catalog" and "mail order promotional material," terms broadly defined as "any materials...that are disseminated in print or by electronic means, and that solicit the purchase of such product or service."
- It allows the FTC to seek monetary penalties of up to \$43,792 for each violation.

Noticeably, the new rule does not cover "qualified" Made in USA claims, e.g., claims that a product is Made in USA from "imported" parts, which will remain enforceable under the FTC's general Section 5 authority. This step appears consistent with the FTC's ongoing focus on Made in USA claims, including an indication in [prior enforcement matters](#) that the FTC will seek monetary penalties for violations. The codification of the guidelines and the inclusion of monetary penalties may also be a reaction to [AMG Capital Management v. FTC](#), in which the U.S. Supreme Court stripped the FTC of its ability to seek monetary penalties in some circumstances.

Authors

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