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Sticker Shock: FTC Enforces “Made in USA” Labeling Rule



Key Takeaways:

- On August 5, 2022, the [Federal Trade Commission \(FTC\) announced a \\$2.8 million settlement](#) with the marketers of Patriot Masks for allegedly deceiving consumers about the efficacy and country of origin of their personal protective products (PPE). Days earlier, in a [similar action finalized on July 28, 2022](#), the FTC imposed over \$200,000 in fines against the owner of a patriotic apparel company for swapping "Made in China" tags with "Made in USA" tags.
- These two cases are the latest in an ongoing push by the FTC to curb false and deceptive "Made in USA" or COVID-19-related representations by individuals capitalizing on a pandemic-fueled demand for American-made products.

Exercising its authority under the FTC Act, the [Made in USA Labeling Rule](#), and the [COVID-19 Consumer Protection Act](#), the [FTC announced](#) on August 9, 2022, that the U.S. Department of Justice (DOJ), on referral from the FTC, had filed suit to enjoin Adam J. Harmon; Axis LED Group, LLC; and ALG-Health LLC (Defendants) from making allegedly false and deceptive U.S.-origin labeling and advertising claims in connection with their offering of PPE and LED lighting products.

In its [complaint](#), the FTC alleged that the Defendants, through their website, social media accounts, marketing materials, and product labeling, claimed that their products were all or virtually all made in the United States. In fact, as alleged by the FTC, the Defendants wholly imported and repackaged their products, including having employees peel off "Made in China" stickers and replace them with "Made in USA" stickers. The complaint also alleged that the Defendants falsely marketed their PPE products as being safer than other products and providing superior protection from COVID-19. Finally, the FTC alleged that as recently as 2016, Defendant Harmon was aware of and had acknowledged FTC guidance and caselaw concerning the standard for making legally compliant "Made in USA" claims after [Defendant Harmon was subject to a previous FTC investigation](#).

The [stipulated settlement order](#) requires that the Defendants pay \$157,683.37 in civil penalties and enjoins them from making false or misleading claims about their products, including (1) making any unsubstantiated claims about their products in connection with (a) the country of origin or (b) the treatment, cure, prevention, or diagnosis of COVID-19; and (2) making unqualified "Made in USA" claims unless they can show that both the final assembly and all or virtually all of the components of its products are made in the United States. The order also specifically requires that any qualified "Made in USA" claims include a clear and conspicuous disclosure about the amount of foreign parts, ingredients, components, and processing contained in the product, and for any "assembled" claim, that the product be last substantially transformed in the United States, its principal assembly take place in the United States, and U.S. assembly operations be substantial. Notably, the Defendants are subject to a suspended judgment of \$2.8 million, which is premised on the Defendants' asserted inability to pay.

In a similar action, the FTC [finalized an order](#) against Lions Not Sheep Products, LLC (Lions) and its owner for fraudulently advertising that their imported clothing was "Made in the USA" when it was wholly made in China. In its complaint, the FTC alleged the shirts were labeled with "Made in the USA," "Made in America," "Are your products USA MADE?" and other similar phrases. However, the business owner allegedly posted a video on Twitter with the caption "Made in America!" in which he said he covered up the fact that the shirts are manufactured in China by removing the tag and replacing it with his own "Made in the U.S." tags. In its decision and order, the FTC required Lions and its owner to pay \$211,335 in fines, stop making the "Made in USA" claims, and reveal the truth about foreign production.

The "Made in USA" Labeling Rule was approved in August 2021, giving the FTC the authority to impose civil penalties on businesses that make fraudulent claims. As discussed in our [prior blog posts](#) on this topic, the FTC's continued focus on "Made in USA" violations makes clear that it considers halting deceptive "Made in USA" claims to be a key priority.

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