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FTC Guidelines for “Made in USA” Statements

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Presenter

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Agenda

• What is the FTC?
• What is the FTC’s role in “Made in USA” claims?
• How does the FTC’s guidelines coincide with CBP country of origin label requirements?
• Do those two agencies’ rules ever intersect?
Made in USA markings are voluntary

Origin marking of goods manufactured or produced in the **United States** is not required.

- Federal Trade Commission (FTC) jurisdiction
- Standard requires that a product advertised or sold as “Made in USA” be “**all or virtually all**” made in the US.
Foreign origin markings are required

Origin marking of goods of foreign origin is required.

- Customs and Border Protection (CBP) jurisdiction
- Standards vary depending upon the goods; generally requires that the goods be “wholly obtained or produced” or there be a “substantial transformation”
What is the FTC?

The Federal Trade Commission ("FTC") is an independent federal government agency that is charged with preventing deception and unfairness in the marketplace.

Consumer protection is focus of agency’s mission.

FTC has the authority to bring law enforcement actions against what it perceives to be false or misleading claims regarding goods and merchandise purported to be of U.S. origin.
FTC’s “All or Virtually All” standard

Must be substantiated by evidence that “all or virtually all” significant parts and processing that go into the product must be of US origin.

- The product should contain no – or negligible – foreign content.
Factors Considered

• final assembly or processing must take place in the US;
• total manufacturing costs of US parts and processing;
• value of US materials and labor;
• remoteness of foreign content.
If a manufacturer or marketer makes an unqualified “Made in USA” claim, they must have a “reasonable basis” to support the claim.

- Competent and reliable evidence
- Affirmative obligation to ask any supplier for specifics regarding the percentage of U.S. content in a good before they make a “Made in USA” claim.
- Can rely on this information in good faith
Qualified claims can be used.

- “60% US content”
- “Made in USA of US and imported parts”
- “Assembled in USA”
  - Without further qualification, this is permitted if principal assembly takes place in the U.S. and the assembly is substantial.
- “Assembled in USA from Italian leather and Mexican frame”
The Intersection with CBP

CBP requires that imported goods be marked as to country of origin.

Failure to mark goods (or containers) can result in detention and/or 10% marking penalties and liquidated damages. Standards vary depending upon the goods; generally, origin is based on where the goods are “wholly obtained or produced” or the last country in which a “substantial transformation” took place.

- Results in a new and different article with new name, character and use
- Case by case
Example

A US pharmaceutical company imports raw materials from two different countries and combines the two raw materials in the US in a complex and expensive process to produce an intermediate chemical. The importer then takes the chemical and further manufactures it into a capsule.
CBP Result

What do CBP’s origin rules require for marking purposes?

• Double substantial transformation. CBP confirms no foreign origin marking is necessary.
FTC Result

US pharmaceutical company “logically” assumes if the article is not of foreign origin for CBP purposes, they are “Made in the USA”.

FTC challenges the marking of these capsules as the product is not made from “virtually all” US ingredients.
Meeting the requirements of both

Who is right? Both agencies.

Are the results incongruous and illogical? Yes.

Conflicting? Not really.

What do you do? Maybe you should not make the “Made in USA” claim; remember, it is voluntary.
Example 2

You sell a manufactured good in the United States. It is comprised of 60% Italian components and 40% German components. The assembly process is done in the U.S.
CBP Result

What do CBP’s origin rules require for marking purposes?

- Depending upon the size of the components, and the nature and extent of the assembly process, CBP has jurisdiction of this product. Unless the goods have undergone a substantial transformation, it is likely CBP will require foreign origin marking.
FTC Result

The FTC may also have jurisdiction. In considering whether it is “all or virtually all” made in the United States, the FTC will consider the amount of foreign content, the complexity of the processing done in the United States and the amount of the manufacturing (assembly) costs that are attributable to the U.S. assembly process.
Meeting the requirements of both

Who is right? Both agencies.

Are the results incongruous and illogical? No.

Conflicting? Not really.

What do you do? If, in this example, the goods are not transformed into a new and separate article of commerce by virtue of the assembly in the US, foreign origin labels will be required. Whether or not the assembled good would have met the FTC’s “all of virtually all” standard, it is probably best to not include the voluntary “Assembled in USA” label. To put both labels on the goods would be inherently confusing, and likely to result in problems with both agencies.
Other government agencies with specific labeling rules:

Federal Trade Commission (FTC)
Environmental Protection Agency (EPA)
Department of Transportation (DOT)
Department of Commerce (DOC)
Food and Drug Administration (FDA)
Consumer Product Safety Commission (CPSC)
Assessment

• KWIKSET
Things to remember:

Labels required by agencies other than CBP have different purposes and use different criteria. The labeling requirements of other PGAs do not negate or diminish CBP’s requirements. Creative solutions may need to be found to meet the requirements of all agencies. Remember CBP’s rule about avoiding confusion.
Thank you…

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