



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Consumer Protection
Division of Enforcement

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February 7, 2023

VIA EMAIL

Kas R. DeCarvalho, Esq.
Pannone Lopes Devereaus & O’Gara LLC
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Dear Mr. DeCarvalho:

We received your submissions on behalf of Arnold Lumber Co., d/b/a Seaside Casual Furniture (“Seaside Casual” or the “Company”). During our review, we discussed concerns that marketing materials may have overstated the extent to which Seaside Casual’s outdoor furniture products are made in the United States. Specifically, among other things, certain Seaside Casual products incorporate significant imported materials.

As discussed, unqualified U.S.-origin claims in marketing materials – including claims that products are “Made” or “Built” in the USA or any state or geographic region therein – likely suggest to consumers that the products advertised in those materials are “all or virtually all” made in the United States.¹ The Commission may analyze a number of different factors to determine whether a product is “all or virtually all” made in the United States, including the proportion of the product’s total manufacturing costs attributable to U.S. parts and processing, how far removed any foreign content is from the finished product, and the importance of the foreign content or processing to the overall function of the product. The “all or virtually all” standard is codified in the Made in USA Labeling Rule, 16 C.F.R. § 323 (the “MUSA Labeling Rule”).²

¹ FTC, *Issuance of Enforcement Policy Statement on “Made in USA” and Other U.S. Origin Claims*, 62 Fed. Reg. 63756, 63768 (Dec. 2, 1997) (the “Policy Statement”). Additionally, beyond express “Made in USA” claims, “[d]epending on the context, U.S. symbols or geographic references, such as U.S. flags, outlines of U.S. maps, or references to U.S. locations of headquarters or factories, may, by themselves or in conjunction with other phrases or images, convey a claim of U.S. origin.” *Id.*

² Effective August 13, 2021, it is a violation of the MUSA Labeling Rule to label any covered product “Made in the United States,” as the MUSA Labeling Rule defines that term, unless the final assembly or processing of the product occurs in the United States, all significant processing

The Commission has explained that, unless marketers either specify which products are covered or directly link claims to particular products, consumers generally interpret U.S.-origin claims in marketing materials to cover all products advertised in those materials. Accordingly, the Policy Statement provides, “marketers should not represent, either expressly or by implication, that a whole product line is of U.S. origin (*e.g.*, ‘Our products are Made in USA’) when only some products in the product line are, in fact, made in the United States.”³

For a product that is substantially transformed in the United States, but not “all or virtually all” made in the United States, the Policy Statement explains, “any claim of U.S. origin should be adequately qualified to avoid consumer deception about the presence or amount of foreign content Clarity of language, prominence of type size and style, proximity to the claim being qualified, and an absence of contrary claims that could undercut the effectiveness of the qualification will maximize the likelihood that the qualifications and disclosures are appropriately clear and prominent.”⁴

As discussed, it is appropriate for Seaside Casual to promote the fact that it has operated in Rhode Island for many years and continues to employ workers to perform certain operations there. However, depending on the net impression conveyed, the Company may need to include prominent qualifications to avoid implying that products advertised are “all or virtually all” made in the United States, unless that becomes the case. Moreover, to the extent Seaside Casual offers wholly imported products, the Company should tailor any claims to the products to which they relate and take care not to imply they cover all Company products.

To avoid deceiving consumers, Seaside Casual implemented a remedial action plan. This included: (1) rebranding the Company logo to remove unqualified origin statements; (2) updating all marketing materials, including online materials, hardcopy materials, product packaging, and assembly instructions; (3) communicating changes to authorized resellers and declining to supply additional products to noncompliant resellers;⁵ (4) introducing new approval protocols for U.S.-origin marketing claims; and (5) training staff.

FTC staff members are available to work with companies to craft claims that serve the dual purposes of conveying non-deceptive information and highlighting work done in the United

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. *See* <https://www.federalregister.gov/documents/2021/07/14/2021-14610/made-in-usa-labeling-rule>. Pursuant to 15 U.S.C. § 45(m)(1)(A), the Commission may seek civil penalties of up to \$50,120 per MUSA Rule violation.

³ Policy Statement, 62 Fed. Reg. 63756, 63768 n.111.

⁴ Policy Statement, 62 Fed. Reg. 63756, 63769.

⁵ Seaside Casual identified some residual unqualified claims that appear in the marketplace in two situations: (1) on websites belonging to noncompliant resellers to whom Seaside Casual will not supply products until they become compliant; (2) in historical social media materials (older than two years) the Company is unable to access or remove. Seaside Casual continues to monitor claims for its products to prevent consumer confusion.

States. Based on the Company's actions and other factors, the staff has decided not to pursue this investigation any further. This action should not be construed as a determination that there was no violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. The Commission reserves the right to take such further action as the public interest may require. If you have any questions, please feel free to call.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. ENSOR".

Julia Solomon Ensor, Staff Attorney

A handwritten signature in blue ink, appearing to read "Lashanda J. Freeman".

Lashanda Freeman, Senior Investigator