



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

Bureau of Consumer Protection
Division of Enforcement

Julia Solomon Ensor
Attorney

Email: jensor@ftc.gov
Direct Dial: (202) 326-2377

July 7, 2022

VIA EMAIL

Wrede H. Smith III, Esq.
McGuireWoods LLP
888 16th Street N.W.
Suite 500
Black Lives Matter Plaza
Washington, DC 20006
whsmith@mcguirewoods.com

Dear Mr. Smith:

We received your submissions on behalf of Diamondback Toolbelts, LLC (“Diamondback” or the “Company”). During our review, we discussed concerns that marketing materials may have overstated the extent to which the Company’s toolbelts are made in the United States. Specifically, although Diamondback designs and sews fabric toolbelts in the United States, important product components are imported.

As discussed, unqualified “Made in USA” claims in marketing materials 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 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 Rule to label any covered product “Made in the United States,” as the MUSA Rule defines that term, unless the final assembly or processing of the product occurs in the United States, all significant processing 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->

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.”³

As discussed, it is appropriate for Diamondback to promote the fact it creates jobs and performs certain functions in the United States. However, marketing materials should not state or imply that products are “all or virtually all” made in the United States, unless the company can substantiate such claims.

To avoid deceiving consumers, Diamondback implemented a remedial action plan. This plan included: (1) removing unqualified “Made in USA” claims from all marketing materials, including social media; (2) introducing qualified claims clarifying that products incorporate imported materials, including on product hangtags; (3) communicating directly with authorized dealers and providing new materials; (4) notifying noncompliant or noncommunicative dealers and retailers that Diamondback will no longer accept orders or otherwise do business with them until websites are updated to remove potentially deceptive claims; and (5) training employees.

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 States. Based on Diamondback’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,



Julia Solomon Ensor
Staff Attorney



Lashanda Freeman
Senior Investigator

labeling-rule. Pursuant to 15 U.S.C. § 45(m)(1)(A), the Commission may seek civil penalties of up to \$46,517 per MUSA Rule violation.

³ Policy Statement, 62 Fed. Reg. 63756, 63769.