



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

Bureau of Consumer Protection
Division of Enforcement

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January 18, 2017

VIA FEDEX

Adam Harmon, President
Axis LED Group, LLC
6810 Avery Road
Dublin, OH 43017

Dear Mr. Harmon:

We received your submissions on behalf of Axis LED Group, LLC, also d/b/a Patriot Tube ("Axis" or the "Company"). During our review, we raised concerns that certain marketing materials may have overstated the extent to which Axis makes products, including LED tubes, in the United States. Specifically, although certain of Axis's tubes are assembled in the United States, those products incorporate significant imported content.

In the Company's submissions, Axis provided a certificate stating that certain products qualify as "Domestic End Products" under the Buy American Act, *see* 41 U.S.C. §§ 8301-8305 ("BAA"). As you know, BAA establishes price preferences for domestic end products and construction materials in government acquisitions, and defines those terms as they are used in that limited context.¹ Although truthful claims that products are BAA-compliant convey useful information to government purchasers, such claims directed to non-governmental consumers likely convey an unqualified "Made in USA" claim.²

As we discussed, unqualified "Made in USA" or "Built in USA" claims on marketing materials likely suggest to consumers that all products advertised in those materials are "all or

¹ *See* 48 CFR § 25.003 (stating that for purposes of BAA, "domestic end product[s]" and "domestic construction material[s]" include, among other things, certain manufactured products or materials where either the cost of the components mined, produced, or manufactured in the United States exceeds 50% of the cost of all components, or the product or material is a commercially available off-the-shelf item).

² *See FTC Policy Statement on Deception*, 103 F.T.C. 174 (1984) (*appended to In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 177-78 (1984) ("When representations or sales practices are targeted to a specific audience, the Commission determines the effect of the practice on a reasonable member of that group.")).

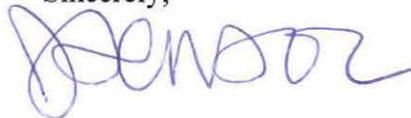
virtually all” made in the United States. The FTC’s Enforcement Policy Statement on “Made in USA” and Other U.S. Origin Claims (the “Policy Statement”) provides that “[a] product that is all or virtually all made in the United States will ordinarily be one in which all significant parts and processing that go into the product are of U.S. origin. In other words, where a product is labeled or otherwise advertised with an unqualified ‘Made in USA’ claim, it should contain only a *de minimis*, or negligible, amount of foreign content.”³

The Policy Statement further explains that “‘Assembled in USA’ claims should be limited to those instances where the product has undergone its principal assembly in the United States and that assembly is substantial. In addition, a product should be last substantially transformed in the United States to properly use an ‘Assembled in USA’ claim.”⁴

To avoid deceiving consumers, you explained that Axis implemented a remedial action plan to clarify its representations. The plan included: (1) replacing all affected “Made in USA” claims on Axis marketing materials with “Assembled in the USA” claims; and (2) qualifying “Buy American Act Compliant” claims on marketing materials not specifically targeted at government consumers with “Assembled in the USA” claims.

Based on your 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, you can reach me at (202) 326-2377.

Sincerely,



Julia Solomon Ensor
Staff Attorney

³ Federal Trade Commission, *Issuance of Enforcement Policy Statement on “Made in USA” and Other U.S. Origin Claims*, 62 Fed. Reg. 63756, 63768 (Dec. 2, 1997).

⁴ *Id.* at 63770.