

MADE 
in the 
USA 

An FTC Workshop

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OPENING

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Director, Bureau of Consumer Protection

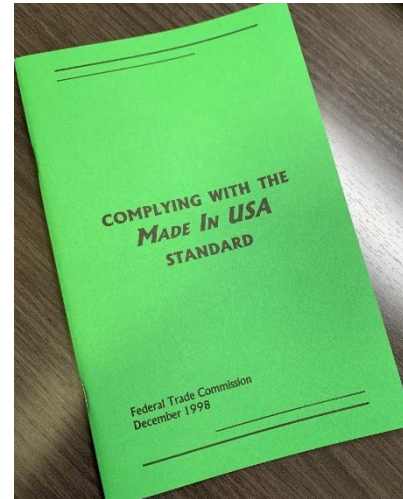
WELCOME

**James Kohm, Associate Director
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The FTC and “Made in USA” Claims

U.S. Origin Claims and the FTC: Authority and Enforcement Policy Statement

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Views expressed today are my own.

Overview

FTC and Advertising Law

The FTC's Enforcement Policy Statement on U.S. Origin Claims (“all or virtually all”)

The FTC's Statutory Authority

“Unfair or deceptive acts or practices . . . are hereby declared unlawful.”



FTC Act, Section 5
(15 U.S.C. § 45)

FTC Policy Statement on Deception

appended to Cliffdale Assoc., Inc., 103 FTC 110, 174 (1984)

1. A representation, omission, or practice likely to mislead
2. Considered from the perspective of the reasonable consumer
3. That is material

Advertising that lacks a reasonable basis is deceptive.

Significant Minority

- A claim need not mislead all – or even most – consumers to be deceptive under the FTC Act. Rather, the claim need only be likely to deceive **some consumers acting reasonably**.
- A material practice that misleads a **significant minority** of reasonable consumers is deceptive. (Deception Policy Statement, n.20).
- **“Significant minority” = as low as 10.5% of consumers, net of control.**
 - *Telebrands Corp.*, 140 F.T.C. 278, 325 (2005) (10.5%-17.3%).
 - *Firestone Tire & Rubber Co. v. FTC*, 481 F.2d 246, 249 (6th Cir. 1973) (it would be “hard to overturn the deception findings of the Commission if the ad . . . misled 15% (or 10%) of the buying public”).
 - *FTC v. John Beck Amazing Profits, LLC*, 865 F. Supp. 2d 1052, 1070 n.88 (C.D. Cal. 2012) (“evidence showing that 10.5% to 17.3% of copy-test respondents took away the message at issue is sufficient to prove the complaint allegation that the challenged representation had been made”).

1997 Enforcement Policy Statement on U.S. Origin Claims

- Helps marketers comply with Section 5; not a rule/not independently enforceable.
- Based on Commission precedent, consumer perception testing, and thousands of comments.

1997 Enforcement Policy Statement on U.S. Origin Claims

- Unqualified claims: Product must be “all or virtually all” made in the USA.
 - Final assembly/substantial transformation
 - Flexible factors test (costs, position in manufacturing chain, importance to form/function of product)
- Qualified claims: Substantial transformation in USA without additional processing overseas.

15 U.S.C. § 45a

- 1994 law about “Made in USA” or “Made in America” labels.
- Labels must be consistent with FTC’s decisions and orders issued pursuant to Section 5.
- Commission may issue rules pursuant to APA rulemaking (5 U.S.C. 553).

Enforcement/Compliance Program

- **Business education:** presentations and informal staff feedback to any company that seeks it
- **Business counseling:** for companies that try to comply but make mistakes or misunderstand the Policy Statement, counsel into compliance and issue closing letters
- **Targeted enforcement:** administrative or federal court litigation against egregious offenders or companies that refuse to work with us

Priority = help companies find ways to promote the good work they are doing in the USA without deceiving consumers in the process.

Enforcement Data

- 154 closing letters since 2010
- 27 cases in the past 20 years
- 2 civil penalty actions

U.S. Origin Claims and the FTC: Consumer Research

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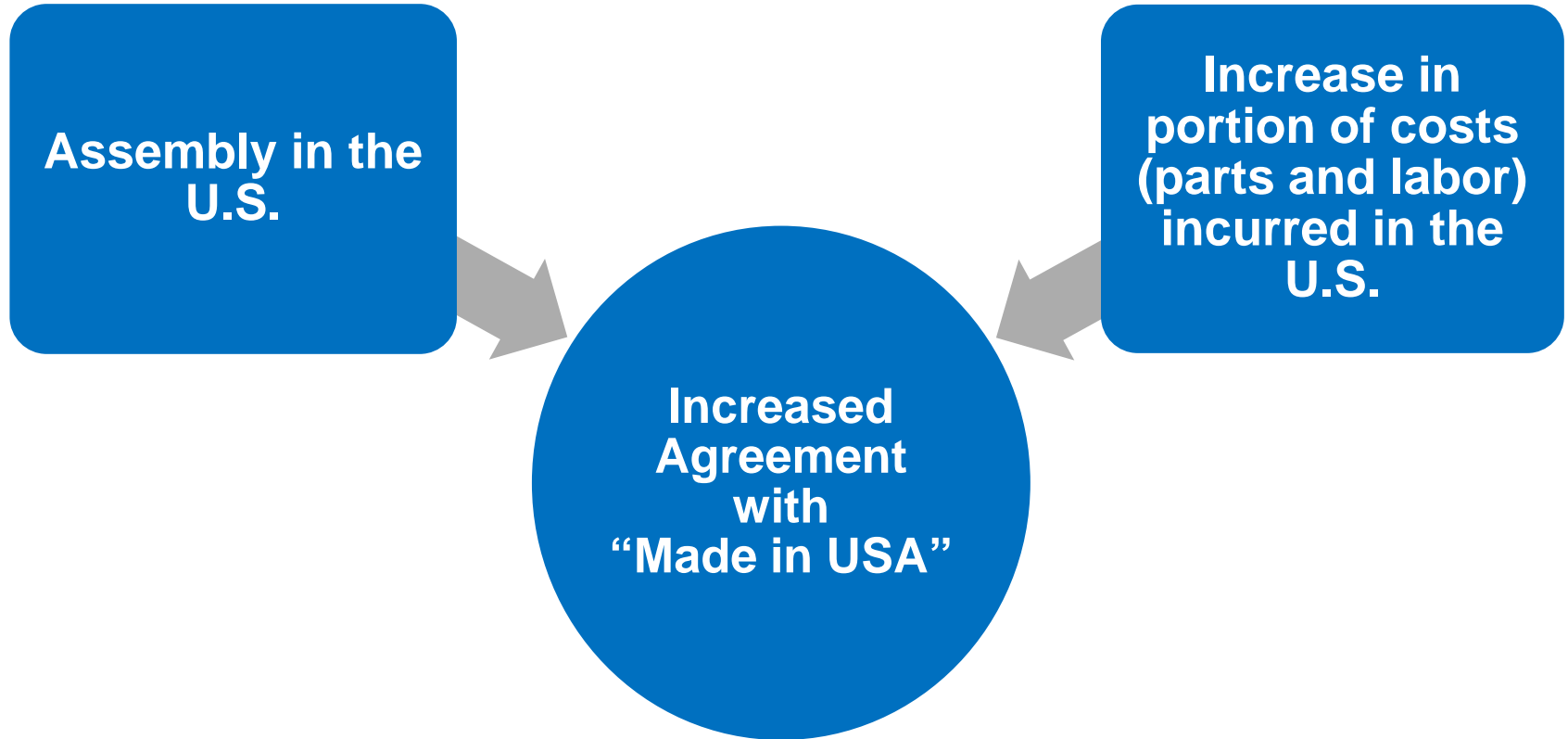
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Existing Consumer Research

- What do “Made in USA” claims mean to consumers?
 - Copy Testing and Survey Research
- How important are “Made in USA” claims to consumers’ purchasing decisions?
 - Survey Research, Real-World Transaction Data, Economic Modeling

Key Findings from Past Research



Two Camps of Consumers

In order to agree with “Made in USA”...*

A sizable minority of consumers think that all or nearly all of the costs or parts must be from the U.S.

The majority of consumers would agree with “Made in USA” if a high degree of the costs or parts are from the U.S.

*for products assembled in the U.S.

Two Camps of Consumers

For example, past research has shown:*

22% of consumers disagree with “Made in USA” even if 90% of the cost was incurred in the U.S.

While...

67% of consumers agree with “Made in USA” if 70% of the cost was incurred in the U.S.

75% would agree if 90% of the cost was incurred in the U.S.

*study asked about a stereo or pen assembled in the U.S. (FTC, 1997)

Do Consumers Care?

- Survey research
 - Respondents often state that they prefer to purchase U.S.-made products
- Mixed evidence in the real-world
 - Country of origin is important, but is often superseded by other attributes, such as quality, brand, and price
 - Context-specific

Considerations for Future Consumer Research

1. Quantitative Research, Specific-Scenarios
2. Randomized, Controlled Design
 - Address biases such as yea-saying, pre-existing beliefs, and selection into pool of respondents
3. Consumer Perception Could Differ Across Products
 - E.g., Availability of raw materials
4. Field Experiments Provide Insight into Actual Consumer Behavior

References

Agrawal, Jagdish and Wagner Kamakura, *Country of Origin: A Competitive Advantage?*, International Journal of Research in Marketing (1999)

Federal Trade Commission, *Made in USA Request for Public Comment on Proposed Guides for the Use of U.S. Origin Claims* (May 1997)

Harris Interactive, The Harris Poll, *Born in the USA or Coming to America* (March 2013)

Koschate-Fischer, Nicole, Adamantios Diamantopoulos, and Katharina Oldenkotte, *Are Consumers Really Willing to Pay More for a Favorable Country Image? A Study of Country-of-Origin Effects on Willingness to Pay*, Journal of International Marketing (2012)

Piron, Francis, *Consumers' Perceptions of the Country-of-origin Effect on Purchasing Intentions of (In)conspicuous Products*, Journal of Consumer Marketing (2000)

Discussion 1:

Consumer Perception – How Do Consumers Interpret Made In USA Claims?

BREAK

Discussion 2:

**Doing Business Under the Current Policy –
What Are the Compliance or Policy
Challenges Under the Current Framework?**

Discussion 3:

**Enforcement Approaches – Should the
Commission Reexamine Its Current Approach
to Addressing Deceptive
Made in USA Claims?**

CLOSING REMARKS/ INVITATION TO COMMENT

THANKS!