



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

Bureau of Consumer Protection
Division of Enforcement

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VIA EMAIL

Alli Baron, Esq.
Sharretts, Paley, Carter & Blauvelt P.C.
75 Broad Street
New York, NY 10004
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Dear Ms. Baron:

We received your submission on behalf of Sassy Baby, Inc. (“Sassy” or the “Company”). In your letter, you explained that Sassy recently discovered it relied upon a supplier’s false declaration of U.S. origin to substantiate “Made in USA” claims for certain diaper waste bag products. After discovering this issue, Sassy immediately removed “Made in USA” claims from affected product packaging and updated all marketing materials, including by editing photos of products previously featuring “Made in USA” labels.

As you know, unqualified U.S.-origin claims in marketing materials – including claims that products are “Made” or “Built” in the USA – 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, *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 that goes into the product occurs in the United States, and all or virtually all ingredients or

To substantiate an unqualified U.S.-origin claim, a marketer should, “at the time the representation is made, possess and rely upon a reasonable basis that the product is in fact all or virtually all made in the United States.”³ Depending on context, supplier-provided certifications may constitute a “reasonable basis.” Specifically, the Commission has explained, “[i]f given in good faith, manufacturers and marketers can rely on information from suppliers about the domestic content in the parts, components, and other elements they produce. Rather than *assume* that the input is 100 percent U.S.-made, however, manufacturers and marketers would be wise to *ask* the supplier for specific information about the percentage of U.S. content before they make a U.S. origin claim.”⁴

In this case, Sassy’s supplier repeatedly asserted its products were “all or virtually all” made in the United States. Moreover, prior to initiating a business relationship, Sassy inspected the supplier’s plant to confirm it had capacity to manufacture Sassy’s products. Finally, upon discovering it had been misled, Sassy took immediate action to correct its claims and voluntarily reported the issue to FTC staff. Accordingly, based on Sassy’s actions and other factors, the staff has decided not to pursue this investigation any further. We remind the Company to review its records routinely to ensure it maintains appropriate substantiation for all advertising claims.

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, or the MUSA Labeling Rule. 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

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 \$46,517 per MUSA Labeling Rule violation.

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

⁴ FTC, *Complying with the Made in USA Standard* (Dec. 1998), <https://www.ftc.gov/business-guidance/resources/complying-made-usa-standard> (providing a template for a potential supplier certification).