



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

Bureau of Consumer Protection
Division of Enforcement

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December 13, 2018

VIA FEDEX

Mr. Robert Nieman
Director of Manufacturing and Technical Services
Emotiva Audio Corporation
135 SE Parkway Court
Franklin, TN 37064

Dear Mr. Nieman:

We received your submissions on behalf of Emotiva Audio Corporation (“Emotiva” or the “Company”). During our review, we discussed concerns that marketing materials may have overstated the extent to which certain Emotiva audio products are made in the United States. Specifically, although certain Emotiva products are designed and assembled in Emotiva’s Franklin, Tennessee facility, these products contain significant imported parts, or parts of unknown origin.

As discussed, unqualified U.S.-origin claims in marketing materials – including claims that products are “Made,” “Built,” or “Manufactured” in the USA – likely suggest to consumers that all 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.

To avoid deceiving consumers, Emotiva quickly implemented a comprehensive remedial action plan to update and qualify its representations. This plan included: (1) rewriting the

¹ 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). 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.*

Company website; (2) updating social media accounts; (3) destroying outdated packaging and other hardcopy marketing materials; (4) applying barcode stickers to cover claims on products; (5) purchasing back mismarked products from Amazon and updating Amazon listings; (6) instructing dealers and distributors to purge outdated materials and confirming compliance within a month; and (7) training marketing personnel on how to communicate product origin.

As discussed, it is appropriate for Emotiva to promote the fact that it employs workers and performs certain processes in the United States, provided that marketing materials do not overstate the extent to which products are made in the United States. Additionally, FTC staff is available to work with companies to craft qualified claims that serve the dual purposes of conveying non-deceptive information to consumers and highlighting work done in the United States.

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

Sincerely,



Julia Solomon Ensor
Staff Attorney