



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

November 18, 2021

VIA EMAIL

Justin O'Neill Kay, Esq.
Faegre Drinker Biddle & Reath LLP
191 N. Wacker Drive, Suite 3700
Chicago, IL 60606
justin.kay@faegredrinker.com

Dear Mr. Kay:

We received your submissions on behalf of Electric Mirror, LLC (“Electric Mirror” or the “Company”). During our review, we discussed concerns that marketing materials may have overstated the extent to which certain LED mirrors and accessories are made in the United States. Specifically, while the Company employs workers and performs manufacturing operations in Everett, WA, Electric Mirror products incorporate significant imported components.

As discussed, 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 FTC recently codified the “all or virtually all” standard into a 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, “[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-labeling-rule>. Pursuant to 15 U.S.C. § 45(m)(1)(A), the Commission may seek civil penalties of up to

Additionally, the Commission has further explained that, unless marketers specify which products are covered or directly link claims to particular products, consumers generally interpret U.S.-origin claims in marketing materials to cover all products advertised in those materials. Accordingly, the Policy Statement provides, “marketers should not represent, either expressly or by implication, that a whole product line is of U.S. origin (*e.g.*, ‘Our products are Made in USA’) when only some products in the product line are, in fact, made in the United States.”³

For products 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.”⁴

As discussed, it is appropriate for Electric Mirror to promote the fact that it employs workers and performs certain functions in the United States, and to state that the Company takes pride in its U.S. operations. However, marketing materials should not convey that products are “all or virtually all” made in the United States unless the Company can substantiate those claims. Accordingly, to avoid deceiving consumers, Electric Mirror implemented a remedial action plan. This plan included: (1) updating the company website, social media accounts, and printed marketing materials; (2) implementing processes to ensure U.S.-origin claims are made only after appropriate management review and approval; and (3) communicating changes to dealers, auditing dealer marketing materials, and suspending nonresponsive dealer accounts.⁵

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 Electric Mirror’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
Federal Trade Investigator

\$43,792 per MUSA Rule violation.

³ Policy Statement, 62 Fed. Reg. 63756, 63768 n.111.

⁴ *Id.* at 63769.

⁵ Electric Mirror notified FTC staff that seven authorized dealers and two unaffiliated entities making unauthorized claims did not complete the required updates to marketing materials. Electric Mirror will not fulfill any orders from these entities until they come into full compliance.