



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

Bureau of Consumer Protection
Division of Enforcement

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November 14, 2016

VIA FEDEX

Bradley G. Haas, Esq.
Katz Teller Brant & Hild
255 East Fifth Street, Suite 2400
Cincinnati, OH 45202-4787

Dear Mr. Haas:

We received your submissions on behalf of your client, Down-Lite International, Inc. (“Down-Lite” or the “Company”). During our review, we discussed concerns that marketing materials may have overstated the extent to which certain Down-Lite comforters, pillows, and mattress pads are made in the United States. Specifically, although Down-Lite assembles and fills many products in the United States, most product shells – and certain product fills – are imported.

As discussed, bedding – including, but not limited to, comforters, pillows, and pads – is covered by the Federal Trade Commission’s Rules and Regulations under the Textile Fiber Products Identification Act, 16 CFR Part 303 (“Textile Rules”). The Textile Rules provide that marketing materials for covered products may make unqualified “Made in USA” claims only if the product is made completely in the United States of materials that were made in the United States. Covered products that contain imported materials must disclose that information. *See* 16 C.F.R. § 303.33(a).¹

In addition to marketing bedding directly to end-use consumers, Down-Lite distributes promotional materials to third-party retailers, which retailers rely upon to market and sell Down-Lite products. As we discussed, providing third-party retailers with the means and instrumentalities to deceive consumers constitutes a violation of Section 5 of the Federal Trade Commission Act. *See, e.g., Regina Corp. v. FTC*, 322 F.2d 765, 768 (3d Cir. 1963); *FTC v.*

¹ Although filling and padding used in covered products for structural purposes (as opposed to for warmth) are not covered by the Textile Rules, U.S.-origin claims made for such filling should comply with Section 5 of the Federal Trade Commission Act, 15 U.S.C. §45(a). The Federal Trade Commission’s Enforcement Policy Statement on U.S.-Origin Claims provides guidance to marketers on how to comply. *See* <https://www.ftc.gov/public-statements/1997/12/enforcement-policy-statement-us-origin-claims>.

Five-Star Auto Club, 97 F. Supp. 2d 502, 530-31 (S.D.N.Y. 2000); *FTC v. Am. Std. Credit Sys., Inc.*, 874 F. Supp. 1080, 1090-91 (C.D. Cal. 1994).

Accordingly, to avoid deceiving consumers, you explained that Down-Lite implemented a corrective action plan to clarify its representations and provide updates to its retail customers. The plan includes: (1) updating law labels for comforters to state “Shell made in China; Filled and finished in the USA of imported materials;” (2) updating law labels for mattress pads to state “Fabric made in China; Filled and finished in the USA of imported materials;” (3) updating packaging materials and artwork inserts to match the law labels; (4) revising the Down-Lite website and social media as appropriate; and (5) providing written notification to retail customers regarding the updated law tags and marketing materials.

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