



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

Bureau of Consumer Protection
Division of Enforcement

Julia Solomon Ensor
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November 15, 2017

VIA FEDEX

Stephen C. Thomas, Esq.
Lowndes, Drosdick, Doster, Kantor & Reed P.A.
1901 S. Harbor City Blvd., Suite 720
Melbourne, FL 32901

Dear Mr. Thomas:

We received your submissions on behalf of your client, Hyperform, Inc., also d/b/a SeaDek and SwimDek ("Hyperform"). During our review, we raised concerns that certain marketing materials may have overstated the extent to which Hyperform products, including, but not limited to, certain EVA non-skid products targeted at the marine, pool, and spa markets, are made in the United States.

As we discussed, unqualified "Made in USA" claims likely suggest to consumers that products are "all or virtually all" made in the United States. 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.

In this case, although Hyperform assembles and performs significant work on its products in the United States, key components, including the EVA foam, are imported. Accordingly, to avoid deceiving consumers, you explained that Hyperform implemented a remedial action plan to clarify its representations. The plan included: (1) replacing unqualified "Made in USA" claims in Hyperform marketing materials with qualified claims such as "Made in the USA from Imported Materials"; (2) sticking over unqualified claims on product packaging until new packaging was available; (3) updating Hyperform's trade show booth; (4) removing or qualifying claims on social media platforms; (5) sending notices to downstream retailers regarding changes to marketing materials; and (6) updating contracts with authorized dealers to include language prohibiting them from making unqualified U.S.-origin claims for Hyperform products.

As we discussed, if in the future Hyperform offers a new product that is "all or virtually all" made in the United States, it would be appropriate for the company to update its marketing materials accordingly.

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,

A handwritten signature in blue ink, appearing to read 'J. Ensor', with a stylized, cursive script.

Julia Solomon Ensor
Staff Attorney