



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

Bureau of Consumer Protection
Division of Enforcement

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June 16, 2020

VIA EMAIL

Mr. Stephen Anderson
President
Merrill Manufacturing Co.
315 Flindt Dr.
Storm Lake, IA 50588

Dear Mr. Anderson:

We received your submissions on behalf of Merrill Manufacturing Co. (“Merrill” or the “Company”). During our review, we discussed concerns that marketing materials may have overstated the extent to which certain yard hydrants and water well accessories are made in the United States. Specifically, although Merrill sells some U.S.-origin products, it also sells other products that are wholly imported or contain significant imported content.

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, Merrill implemented a remedial action plan to update and qualify its representations where needed. This plan included: (1) revising online and hard-copy marketing materials, including product packaging; (2) correcting artwork on tradeshow booths;

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) (“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.*

(3) updating social media platforms; and (4) providing updated materials to distributors and retail accounts.

As discussed, it is appropriate for Merrill to promote the fact that it employs workers and performs certain manufacturing functions in the United States. However, marketing materials should not convey that all Merrill products are made in the United States (unless that becomes the case), or overstate the U.S. content of products that contain significant imported inputs. As you know, 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 Merrill'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