



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

Bureau of Consumer Protection
Division of Enforcement

February 5, 2019

VIA FEDEX

Richard B. Newman, Esq.
Hinch Newman LLP
40 Wall Street
35th Floor
New York, NY 10005

Dear Mr. Newman:

We received your submissions on behalf of Whiteside Machine & Repair Company, Inc. (“Whiteside” or the “Company”). During our review, we discussed concerns that marketing materials may have overstated the extent to which Whiteside products, including router bits, are made in the United States. Specifically, although Whiteside performs some manufacturing functions in the United States, many of its products contain significant imported components.

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.

The Commission has noted that “[w]here a product is not all or virtually all made in the United States, any claim of U.S. origin should be adequately qualified to avoid consumer deception about the presence or amount of foreign content. In order to be effective, any qualifications or disclosures should be sufficiently clear, prominent, and understandable to prevent deception.”²

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.*

² *Id.* at 63769.

To avoid deceiving consumers, Whiteside implemented a remedial action plan to update and qualify its representations. For Whiteside's own materials, the Company: (1) stickered over outdated claims on product packaging; (2) updated online marketing materials; and (3) printed new catalogues, signs, banners, and product packaging. Whiteside also sent a detailed communication to dealers requiring them to: (1) sticker over claims on products in their possession; (2) remove potentially deceptive point-of-sale materials; and (3) update dealer-controlled online materials, including websites and social media accounts.

As discussed, it is appropriate for the Company to promote the fact that it is American-owned, employs workers, or performs certain processes in the United States, provided that marketing materials do not overstate the extent to which Whiteside's 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 Whiteside'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
Division of Enforcement
(202) 326-2377
jensor@ftc.gov



Crystal D. Ostrum
Investigator
Division of Enforcement
(202) 326-3405
costrum@ftc.gov