

February 23, 2018

Federal Trade Commission
Office of the Secretary
Constitution Center
400 7th Street SW, 5th Floor, Suite 5610 (Annex D)
Washington, DC 20024

RE: In the Matter of Bollman Hat Company and SaveAnAmericanJob, LLC, jointly d/b/a American Made Matters, FTC File No. 172 3197, Federal Register, January 29, 2018, Vol 83, No 19, Page 4048

To Whom it May Concern:

On behalf of the American Apparel & Footwear Association (AAFA), thank you for the opportunity to comment on the consent order referenced above. We are writing today not to question the merits of the complaint nor the determinations in the resulting consent order.

Instead, we write because the case highlights the underlying ambiguity in the Federal Trade Commission's (FTC) "all or virtually all" Made in USA standard. At a time when U.S. manufacturing is on the resurgent, we believe the case presents a renewed opportunity for the FTC to clarify the meaning of the "all or virtually all" standard.

Representing more than 1,000 world famous name brands, the American Apparel & Footwear Association (AAFA) is the trusted public policy and political voice of the U.S. apparel and footwear industry, its management and shareholders, its nearly four million U.S. workers, and its contribution of \$384 billion in annual U.S. retail sales.

Today, 98 percent of all clothes and shoes, and 99 percent of all travel goods (handbags, luggage, backpacks, wallets, etc.) are imported into the United States. However, both business demands (fast fashion, quick turn, custom product) and growing consumer interest in Made in USA have encouraged our industry to explore an increase in U.S. manufacturing. In fact, U.S. manufacturing of shoes and clothes has grown by over 60 percent since 2009.

With such high import penetration for such a prolonged period of time, much of the manufacturing supply chain for inputs for clothes, shoes, and travel goods no longer exists in the United States. As a result, U.S. manufacturers have been forced to supplement American-made materials with imported materials.

For apparel, FTC rules have long accommodated this reality through a creative "two-step" back rule. This enables some U.S. apparel production to be labeled with an unqualified "Made in USA" label provided certain specific input items are also manufactured in the United States. Although it is still too restrictive in our opinion to stimulate more U.S. apparel manufacturing, this approach at least represents one method of providing a degree of certainty to the industry.

Regrettably, no such option exists for footwear and travel goods manufacturers. They have had to figure out how to comply with the Made in USA standard using their best judgement. Some have decided that even if their shoe is 90-95 percent U.S.-made, they must still use a qualified Made in USA label, while others have decided that when the majority (over half) of the shoe or travel goods is American-made, it meets the requirements for an unqualified Made in USA label. And then others don't use the Made in USA label at all because of the ambiguity of the standard and concern that they might violate it.

The same is true regarding the use of the "qualified" Made in USA labels, such as "Made in USA of Imported Materials" or "Made in USA of Domestic and Imported Materials". How are "materials" defined by the FTC? What percentage of materials must be made in the USA to qualify for a "qualified" Made in USA label.

In the end, none of these manufacturers can know with certainty whether they are complying with the law. Because the FTC has not defined what "all or virtually all" means, they remain essentially in legal limbo. Meanwhile, their ability to capture market share from imports, especially those that can bear legally compliant labels like "Made in Italy" by merely assembling the product in Italy – using the same operations that do not permit an unqualified Made in U.S. label – has been severely hampered by this ambiguity.

At the same time, there are other well-established, clear, transparent, and enforceable, standards used by the U.S. government for determining country of origin.

For example, U.S. Customs and Border Protection (CBP), based on an international standard created under the auspices of the 182-member nation World Customs Organization (WCO) uses an “assembly” requirement to determine required country of origin markings on imported products. As such, a shoe or travel good that is made of all imported materials, but that is assembled into a shoe in Italy, or Vietnam, will have a “Made in Italy” or “Made in Vietnam” label permanently affixed to the shoe. CBP takes this one step further, enforcing “rules of origin” to determine if imported shoes, travel goods, and other items should receive duty benefits under U.S. trade preference programs and U.S. trade agreements. Since the inception of Generalized System of Preferences (GSP) program in 1974, for example, CBP has had the authority to determine whether imports from GSP eligible countries meet the GSP rule of origin – substantial transformation (it wasn’t a shoe and now it is a shoe) + 35 percent value-added – and thus receive duty-free access to the U.S. market. Finally, the U.S. Department of Commerce for decades has utilized a 50 percent plus one U.S. content requirement for determining whether to provide export assistance to U.S. companies.

We understand, and agree, that the FTC must take into consideration the much higher bar of consumer perception, so that when a product says Made in USA, a consumer believes that the product is substantially made in the USA, not just assembled in the USA.

Establishing a Made in USA standard that is transparent, clear, measurable, and, enforceable will provide the consumer with confidence that the shoe, backpack, or handbag they are buying meets both the letter and the spirit of the Made in USA label.

Therefore, we propose that the FTC use this opportunity to re-evaluate its current Made in USA standard and offer a standard that we believe will work for consumers, for manufacturers, and for all other stakeholders. To use an unqualified “Made in USA” label, we propose that the FTC adopt a requirement of substantial transformation + 51 percent value-added.

Similarly, we urge the FTC to define the meaning of “materials” and provide similar percentages to remove the ambiguity surrounding use of “qualified” Made in USA labels.

Again, we believe this case provides a great opportunity to provide much needed clarity the Made in USA standard. Creating a clear, enforceable standard will promote U.S. manufacturing and give consumers more, not less, certainty that the product they are buying is truly made in the USA.

Thank you for again for the opportunity to submit comments. Please contact Nate Herman of my staff at 202-853-9351 or nherman@aafaglobal.org if you have any questions or would like additional information.

Sincerely,



Rick Helfenbein
President and CEO