

October 12, 2018

Federal Trade Commission,  
Office of the Secretary,  
600 Pennsylvania Avenue NW,  
Suite CC-5610 (Annex D),  
Washington, DC 20580

RE: Patriot Puck; File No. 1823113

The Alliance for American Manufacturing appreciates the opportunity to submit these comments in regard to the Federal Trade Commission's ("Commission" or "FTC") pending consent orders concerning violations of the Commission's *Made in USA Enforcement Policy*.

#### About AAM

The Alliance for American Manufacturing (AAM) is a non-profit, non-partisan partnership formed in 2007 by some of America's leading manufacturers and the United Steelworkers. Our mission is to strengthen American manufacturing and create new private-sector jobs through smart public policies. We believe that an innovative and growing manufacturing base is vital to America's economic and national security, as well as to providing good jobs for future generations. AAM achieves its mission through research, public education, advocacy, strategic communications, and coalition building around the issues that matter most to America's manufacturers and workers.

#### Introduction

Of interest to AAM is the inadequacy of the Commission's approach to resolving violations of the *Made in USA Enforcement Policy* through voluntary compliance measures or cease-and-desist orders. Absent from the proposed consent orders is any notice requirements or restitution to those targeted by this unlawful conduct, nor any admission of facts or liability. This approach, aimed at discouraging future unfair and deceptive conduct in the context of product origin claims, does nothing to remedy the harm to consumers already caused by marketers' deceptive conduct. Because civil penalties authorized under the Federal Trade Commission Act ("FTC Act") are, moreover, typically only sought after a violation of such an order, the toothless bite of this enforcement scheme is rendered ineffective at discouraging deceptive behavior in the initial instance.

In fact, given the persistence of marketers' deceptive product origin claims, the FTC's approach to enforcement of clear violations of its *Made in USA Enforcement Policy* arguably invites unfair and deceptive product origin claims from the most unscrupulous marketers most likely to conduct it. These marketers know that they can reap great benefits from misleading consumers and face only the prospects of a slap on the wrist and a stern admonishment if they get caught.

The FTC possess the authority to more vigorously protect consumers from such deceptive practices. AAM encourages the Commission to reconsider its approach to addressing "Made in USA" fraud. We support vigorous enforcement of Section 5 of the FTC Act as applied to deceptive product origin claims.

Properly enforced, the Commission's *Made in USA Enforcement Policy* can better protect consumers from brazen, deceptive conduct such as that addressed in the pending consent orders. It also poses the potential to strengthen the U.S. manufacturing base, creating jobs here at home and encouraging investments in the American economy.

#### Made in USA

The comments of former FTC Commissioner Rosco B. Starek III in his concurring statement to the Commission's issuance of its *Policy Statement on U.S. Origin* claims are as true today as they were more than twenty years ago.

“Intense public interest in ‘Made in USA’ claims inspired more individual consumer comments than we have received in almost any other comment period during my tenure at the Commission. These comments—which demonstrate that consumers who believe that ‘Made in USA’ means all or virtually all made in the United States are highly motivated to act on their belief... These consumers want to be able to rely on a simple and clear standard, and their awareness of the globalization of the economy evidently has not changed their beliefs about domestic origin claims.”

*-Concurring Statement of Commissioner Roscoe B. Starek, III, Regarding Enforcement Policy Statement on U.S. Origin Claims, 62 Fed. Reg. 63771 (Dec. 2, 1997)*

The U.S. consumer places great value in a "Made in USA" claim because of its perceived association to and embodiment of distinctly American values. When Americans see "Made in USA" branding, they believe the product to have been produced by American workers in clean and safe manufacturing facilities and maintain the highest quality. Furthermore, according to recent polling conducted for AAM of 1,200 likely 2018 general election voters, the top reasons to have manufacturing in the United States include American jobs, it's contribution to the economy, and the sector's importance to national security. Among those polled, 92 percent indicated a favorable view of goods made in America and 91 percent of American factory workers. To the contrary, just 27 percent have a favorable view of goods made in China. Anecdotally, we also frequently hear that American consumers are willing to shoulder a price premium for products manufactured in the United States by American workers. That such a price premium exists demonstrates both the value of a "Made in USA" label and motive for some marketers that unfairly and deceptively apply it to their products.

"Made in USA" fraud hurts consumers and its hurts American manufacturers. When a marketer fraudulently claims a product is "Made in the USA," it robs consumers of their spending dollars. But, just as importantly, weak enforcement of brazen violations of the enforcement policy dilute the value of the mark, allowing deceitful marketers to cloak themselves in the values consumers place in American manufacturing. Each time these deceptive claims are brought to light, it challenges consumer confidence in "Made in USA" labels and incrementally diminishes the value of such a mark in the eyes of those consumers. In turn, any loss of consumer confidence in a "Made in USA" claim diminishes the value of manufacturing in the United States in the eyes of those making investments in manufacturing production capacity.

For these reasons, we are concerned that so-called “no penalty and no restitution” settlements are simply inadequate methods of enforcing origin claims under Section 5 of the FTC Act. Cease-and-desist orders offer no restitution for consumers targeted by the deceptive and unlawful conduct. Admonishments from future conduct do not offer competitors potential recourse from the harm caused by such deceptive marketing that admission of facts or liability could and should.

#### Equitable Remedies in Cases of Brazen Made in USA Fraud

When the Commission withdrew its policy statement on monetary equitable remedies in competition cases, it acknowledged that “disgorgement and restitution can be effective remedies in competition matters, both to deprive wrongdoers of unjust enrichment and to restore their victims to the positions they would have occupied but for the illegal behavior.” *77 Fed. Reg. 47070 (2012)*.

The same argument can be made for Section 5 violations concerning unfair and deceptive misrepresentations of a product's origin. The Commission should more vigorously seek to deprive wrongdoers of the fruits of their misconduct and should seek disgorgement and restitution in cases of brazen “Made in USA” fraud just as it has for competition law violations. Marketers that commit “Made in USA” fraud to exploit consumer preferences for U.S.-made products are unjustly enriched as a result of unlawful acts or practices prohibited by Section 5(a) of the FTC Act, *15 U.S.C. § 45(a)*. Absent equitable remedies, such as disgorgement, deceptive marketers retain their ill-gotten gains, reaping the benefits of their deception at consumers and domestic manufacturers' expense.

The FTC Act authorizes the Commission to seek such equitable remedies. Section 13(b) of the FTC Act, *15 U.S.C. § 53(b)*, permits the FTC to seek injunctive and such other relief as the U.S. District Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

#### Compel Admissions Where Made in USA Fraud Is Clear

The FTC should seek admissions where the “Made in USA” fraud is evident and undisputed. Such admissions are already contemplated in the Commission's rules of practice:

“Every agreement in settlement of a Commission complaint shall contain, in addition to an appropriate proposed order, either an admission of the proposed findings of fact and conclusions of law submitted simultaneously by the Commission's staff or an admission of all jurisdictional facts and an express waiver of the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law.” *16 C.F.R. § 2.32*

An admission may unlock the utility of other laws for consumers and competitors harmed by deceptive representations of a product's origin. For instance, the Lanham Act gives competitors that have been harmed by a false designation of a product's origin, the means to seek civil monetary damages, injunctive relief and corrective advertising to remedy that harm. *15 U.S.C. § 1125*. And, because civil remedies offered by the Lanham Act are potentially far more significant than those typically employed by the FTC, an admission in FTC proceedings that opens the door for such competitor claims may alter a potential fraudster's risk analysis and discourage the deceptive marketing in the first place.

Conclusion

It is on one hand discouraging commentary that “Made in USA” fraud persists despite the Commission's welcomed and regular attention to its *Made in USA Enforcement Policy*. That this fraud persists underscores the value that a “Made in USA” label poses for manufacturers and marketers. Consumers continue to place great value in “Made in USA” claims, reflecting the confidence and pride Americans have for U.S. manufacturing. The Commission can and should do more to protect the value of this mark from dilution. More adequate remedies for violations of the enforcement policy are already available to the Commission and would undoubtedly do more to discourage unfair and deceptive “Made in USA” claims. The time is ripe for the Commission to reconsider its approach to tackling “Made in USA” fraud to better protect against harm to consumers, competition and domestic manufacturing.

Thank you for the opportunity to submit these comments in regard to violations of the Commission's “Made in USA” Enforcement Policy.

Sincerely,



Scott N. Paul  
President  
Alliance for American Manufacturing