



Office of Commissioner
Rohit Chopra

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

STATEMENT OF COMMISSIONER ROHIT CHOPRA

Regarding the Notice of Proposed Rulemaking on Made in USA

*Commission File No. P074204
June 22, 2020*

Today, the Commission is proposing a rule that prohibits false Made in USA labels and authorizes penalties against those who cheat the system and cheapen our national brand. This proposal is an important step forward for American families, workers, and honest manufacturers and sellers, who have expressed “nearly universal” support for this rulemaking.¹ Americans are increasingly seeking out products that are Made in the USA, and today’s rule will help ensure that our national brand is protected.

It is important to emphasize what the proposed rule, if finalized, will and will not accomplish. First, the rule will not impose any new substantive requirements on businesses, as they are already required to ensure Made in USA labels are accurate. Second, the proposed rule will not cover all Made in USA advertising. While I would have preferred a broader prohibition on Made in USA fraud, the proposed rule strikes a reasonable compromise, targeting Made in USA labeling both online and offline, consistent with our statutory authority.² Public comment will help us refine our proposal before final publication.

What the rule will accomplish is greater deterrence against Made in USA fraud, stronger relief for families and businesses who are harmed, and lower resource burdens for the Commission. By codifying the FTC’s existing guidance, the Commission will be able to seek civil penalties of up to \$43,280 per violation. While stiff penalties are not appropriate in every instance, they send a strong signal to would-be violators that they abuse the Made in USA label at their peril. These penalties can also be leveraged to seek more relief for consumers, including redress, disgorgement, and even damages.³

¹ See FED. TRADE COMM’N, MADE IN USA WORKSHOP REPORT, 17 (Jun. 19, 2020) noting that “commenters expressed nearly universal support for an FTC rule addressing MUSA claims”).

² Section 45a does not define the term “label,” nor does the text limit the Commission’s authority to physical labels stitched to a product through a sewing or manufacturing process. See 15 U.S.C. § 45a. The Commission has developed considerable expertise on statutes and policies related to the communication of objective information to consumers outside of traditional advertising. We have relied on this expertise to define what constitutes a label.

³ See 15 U.S.C. § 57b (authorizing the Commission to seek “rescission or reformation of contracts, the refund of money or return of property, the payment of damages, and public notification”).

Importantly, by allowing the Commission to seek relief through Section 5(m) or Section 19 of the FTC Act, the rule eliminates the perceived litigation risks associated with Section 13(b), which defendants invoke to try to sidestep accountability. This will prevent time-consuming, resource-intensive gamesmanship around the contours of our authority. The rulemaking will also reduce our need to retain costly experts, and will help us achieve better results for families and honest businesses. I expect that the Commission will need to continue to codify well-accepted legal precedents and enforcement policy into rules – rules which impose no new substantive obligations on market participants – in order to minimize these stall tactics by paid-by-the-hour advocates for lawbreakers. Such rules allow the Commission to use its resources more effectively, obtain more fulsome relief, and deter wrongdoers.

Over the last two years, the Commission has strengthened its approach to Made in USA fraud. In addition to moving forward on this rulemaking, the Commission has convened stakeholders to sharpen its thinking on its Made in USA enforcement,⁴ and has significantly stepped up the monetary relief it seeks against violators, as seen in the recent action against Williams-Sonoma.⁵ These changes reflect a sense that the FTC must always engage in self-critical analysis and introspection.

Given the shortages and disruptions faced by American families and health care workers seeking critical supplies, including personal protective equipment during this pandemic, these changes are also timely, as American companies and policymakers are rethinking the wisdom of global supply chains that lack resilience. American companies and workers should feel confident that bringing production back home will be rewarded in the marketplace. Protecting the Made in USA brand is critical to generating that confidence.

Regrettably, Commissioners Phillips and Wilson offer a legal blueprint to those seeking to challenge the rule, arguing that it should cover only physical labels affixed to products. Even setting aside the problem this presents for millions of Americans who shop online, this objection is not well grounded. While my colleagues may have policy differences on Made in USA fraud,⁶ the FTC has discretion to interpret the term “label,” and the provision to which they object is modeled after time-tested Commission rules governing the use of labels.⁷ Furthermore, our peer

⁴ *See supra* at 1.

⁵ Press Release, Fed Trade Comm’n, Williams-Sonoma, Inc. Settles with FTC, Agrees to Stop Making Overly Broad and Misleading ‘Made in USA’ Claims about Houseware and Furniture Products (Mar. 30, 2020), <https://www.ftc.gov/news-events/press-releases/2020/03/williams-sonoma-inc-settles-ftc-agrees-stop-making-overly-broad>.

⁶ I recognize that Commissioners Wilson and Phillips may have different views on our enforcement strategy, particularly as to whether no-money orders are appropriate and advance the goal of general deterrence in cases of egregious Made in USA fraud. *See, e.g.*, Press Release, Fed Trade Comm’n, FTC Approves Final Consents Settling Charges that Hockey Puck Seller, Companies Selling Recreational and Outdoor Equipment Made False ‘Made in USA’ Claims (Apr. 17, 2019), <https://www.ftc.gov/news-events/press-releases/2019/04/ftc-approves-final-consents-settling-charges-hockey-puck-seller>. Nevertheless, I hope and am confident that they will keep an open mind on this rulemaking.

⁷ *See, e.g.* Wool Rules, 16 C.F.R. § 300.25a (requiring that when wool products are advertised for mail order, defined to include e-commerce, that the product description shall contain a statement of the product’s country of origin); Textile Rules, 16 C.F.R. § 303.34 (requiring that when textile products are advertised for mail order, defined to include e-commerce, that the product description shall contain a statement of the product’s country of origin).

agencies have not hesitated to challenge unlawful online labeling using similar authority.⁸ The Commission is on strong legal ground, and I am confident our staff will prevail against any challenge based on the theory proffered by Commissioners Phillips and Wilson.

Today's announcement is an important milestone for the FTC. I congratulate Chairman Simons, Commissioner Slaughter, and everyone inside and outside the agency who made this proposal a reality.

⁸ For example, the FDA recently warned a drug company that its social media posts misbranded a product in violation of 21 U.S.C. 352(a), which governs "False or Misleading Labels." Food and Drug Administration, Warning Letter to Eric Gervais, Executive Vice President, Duchesnay, Inc. (Aug. 7, 2015), <https://www.fda.gov/media/93230/download>.