



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

Bureau of Consumer Protection
Division of Enforcement

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August 23, 2024

VIA EMAIL

Michael E. Murphy, Esq.
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Dear Mr. Murphy:

We received your submissions on behalf of Drywall Master Tools, Inc., also d/b/a Optimo (“Drywall Master” or the “Company”). During our review, we discussed concerns that marketing materials may have overstated the extent to which certain products, including, but not limited to, certain drywall hanging tools, are made in the United States. Specifically, among other things, Drywall Master’s website included broad, unqualified “Made in USA” claims when, in fact, certain featured products incorporate significant imported components. Additionally, the Company’s catalog featured outdated photos of product packaging with “Made in USA” labels, despite the fact packaging had been updated to remove such claims.

In most instances, unqualified U.S.-origin claims in marketing materials – including claims products are “Made” or “Built” in the USA – likely suggest to consumers that the advertised products are “all or virtually all” made in the United States.¹ Depending on context, 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 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 product’s overall function. The “all or virtually all” standard is codified in the Made in USA Labeling Rule, 16 C.F.R. § 323 (the “MUSA Labeling Rule”).²

¹ FTC, *Issuance of Enforcement Policy Statement on “Made in USA” and Other U.S. Origin Claims*, 62 Fed. Reg. 63756, 63768 (Dec. 2, 1997) (the “Policy Statement”).

² Effective August 13, 2021, it is a violation of the MUSA Labeling Rule to label any covered product “Made in the United States,” as the MUSA Labeling Rule defines that term, unless the final assembly or processing of the product occurs in the United States, all significant processing that goes into the product occurs in the United States, and all or virtually all ingredients or components of the product are made and sourced in the United States. See <https://www.federalregister.gov/documents/2021/07/14/2021-14610/made-in-usa-labeling-rule>. Pursuant to 15 U.S.C. § 45(m)(1)(A), the Commission may seek civil penalties of up to \$51,744 per MUSA Labeling Rule

The Commission has explained that, unless marketers either specify which products are covered or directly link claims to particular products, consumers generally interpret U.S.-origin claims in marketing materials to cover *all* products advertised in those materials. Accordingly, the Policy Statement provides, “marketers should not represent, either expressly or by implication, that a whole product line is of U.S. origin (*e.g.*, ‘Our products are Made in USA’) when only some products in the product line are, in fact, made in the United States.”³

Additionally, it is deceptive to make a “Made in USA” claim – or any other advertising claim – “unless, *at the time the claim is made*, the marketer possesses and relies upon a reasonable basis substantiating the claim” (emphasis added).⁴ Marketers must remain vigilant and update marketing materials – including product photos depicting claims on packaging – if they can no longer substantiate that products previously advertised as “Made in the USA” are “all or virtually all” made in the United States. Among other things, the MUSA Labeling Rule applies to “Made in USA” labels on products in online marketing materials, catalogs, and other mail order advertising.⁵ Thus, marketers who use images of products with “Made in USA” labels in such advertising to promote items no longer “all or virtually all” made in the United States may be liable for civil penalties.

As discussed, it is appropriate for the Company to promote its commitment to American jobs and highlight U.S. processes. However, marketing materials should not state or imply products are wholly or partially made in the United States unless the Company can substantiate those claims. To avoid deceiving consumers, Drywall Master has removed unqualified “Made in USA” claims from all marketing materials and communicated this change to retailers.

FTC staff members are available to work with companies to craft claims serving the dual purposes of conveying non-deceptive information and highlighting work done in the United States. Based on the Company’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 applicable law. 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, Senior Investigator

violation.

³ Policy Statement, 62 Fed. Reg. 63756, 63768 n.111.

⁴ Policy Statement, 62 Fed. Reg. 63756, 63767.

⁵ See 16 C.F.R. § 323.3.