

# Did the Other Shoe Drop? Another Class Action Against New Balance for its “Made in USA” Claims

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The FTC regularly investigates Made in USA claims, but private actions have been less frequent. New Balance, however, has faced at least two class action lawsuits alleging it falsely advertises its footwear products as “Made in the USA.” The most recent complaint, proposing a nationwide class, was filed in the U.S. District Court for the District of Massachusetts and alleges violations of California’s False Advertising Law, Unfair Competition Law, and Consumers Legal Remedies Act, as well as fraud and breach of warranty. New Balance has filed a motion to dismiss, asserting that plaintiffs are trying to re-litigate the same legal theories and the same conduct involved in a case that New Balance previously settled. In the previous case, without admitting liability, New Balance agreed to take additional steps (operative by the 2019 settlement date) to disclose that its shoes have “domestic value of 70% or greater” and to pay \$750,000.

Plaintiffs assert that New Balance continued to make false and misleading “Made in the USA” claims. According to the complaint, New Balance features “Made in USA” claims along with an American flag on several models of its footwear products, including on the tongues of the shoes and on its shoe boxes.



#### **Made in the USA**

New Balance MADE contains a domestic value of 70% or more. MADE makes up a limited portion of New Balance's US sales.

Although plaintiffs acknowledge that New Balance discloses on its website and packaging that the products “contain a domestic value of 70% or greater,” they assert that the term “domestic value” is not clear and that consumers are not likely to see the disclosures. Plaintiffs cite the Federal Trade Commission’s standard for unqualified claims that all or virtually all ingredients or components of the product must be made and sourced in the U.S., and that any

qualifying language must be clearly and conspicuously disclosed. In addition, plaintiffs cite a 2020 survey to argue that had consumers known that the sneakers were not “Made in USA,” they would have paid less or would not have purchased the sneakers at all. In its motion to dismiss, New Balance asserts compliance with the previous injunction and argues that plaintiffs fail to address that injunction and its legal effects. For example, plaintiffs do not allege that New Balance failed to comply with the previous injunction, implicitly conceding that New Balance makes all required disclosures to qualify the claim. In addition, plaintiffs do not allege that the qualified claims are actionable. Subscribe to our Made in USA Tracker to stay up-to-date on relevant issues and for our comprehensive summary of FTC closing letters relating to Made in USA matters. To subscribe, please email [jscurry@kelleydrye.com](mailto:jscurry@kelleydrye.com) or sign up [here](#).