

FTC Addresses Supplier Due-Diligence for Made In USA Claims

Gonzalo E. Mon

September 16, 2022

As we've noted in [other posts](#), an FTC rule prohibits companies from stating or implying that a product is made in the USA unless: (1) the final assembly or processing of the product occurs in the USA; (2) all significant processing that goes into the product occurs in the USA; and (3) all or virtually all components are made or sourced in the USA. It can be a challenge to figure out whether a product you make meets that standard, especially when you get components from suppliers. A new FTC closing letter sheds some light on how companies should go about this.



Sassy Baby makes toys and other products for babies. Up until recently, the company claimed that some of the products were “Made in USA” based, in part, on assurances it had received from its supplier. When the company learned that it had been misled by the supplier, it stopped making the claims and voluntarily reported the issue to the FTC. The FTC decided not to pursue the investigation – presumably because Sassy Baby had done initial due diligence and quickly fixed the problem when they discovered it – but the staff took the opportunity to discuss whether companies can generally rely on their suppliers.

Notably, companies should not just assume that the components they obtain from suppliers are all or virtually all made in the USA. Instead, they should ask their suppliers for information about the percentage of US content in those components. The letter notes that, depending on context, supplier-provided certifications may constitute a “reasonable basis” for an advertiser to make a “Made in USA” claim. In a footnote, FTC staff point to a 1998 guidance document that actually includes sample language that companies can use in purchase orders with suppliers.

Although this case seemed to stem from the company’s voluntary report, rather than from the FTC’s own investigation, “Made in USA” claims are still a hot topic for the FTC and the agency is likely to continue its own investigations. If you make claims about domestic origin, be sure to take a close

look at the FTC's new Made in USA Labeling Rule and assess how well you're complying. With the enactment of the new Rule, companies can find themselves paying steep penalties for failure to comply.