

FTC Moving Away From “Lax Enforcement” with Made in USA Claims

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The FTC recently [announced](#) that glue maker, Chemence, paid a landmark \$1.2 million settlement to resolve allegations that the company failed to comply with a [2016 Order](#) regarding “Made in USA” claims. The 2016 Order required Chemence to pay \$220,000 and to stop making misleading claims that its products were made in the United States.

According to the newest [complaint](#), in spite of the 2016 Order, Chemence continued to falsely label its products with an unqualified “Proudly Made in USA” claim, despite foreign materials accounting for more than 80 percent of the materials costs and more than 50 percent of the overall manufacturing costs. The complaint also alleges that Chemence’s president, James Cooke, falsely declared under penalty of perjury that Chemence had modified its labeling to read “Made in USA with US and globally sourced materials.”

The resulting Order again requires Chemence to refrain from making misleading “Made in USA claims,” including unqualified claims unless they can show that the product’s final assembly or processing and all significant processing takes place in the United States, and that all or virtually all ingredients or components of the product are made and sourced in the United States. To the extent that Chemence makes qualified “Made in USA” claims, the company must provide a clear and conspicuous disclosure regarding which product contains foreign parts. If Chemence claims that a product is assembled in the United States, the company must ensure that it is last substantially transformed in the United States, its principal assembly takes place in the United States, and the United States assembly operations are substantial. The Order also prohibits Chemence from making any misleading country-of-origin claim about a product unless they have a reasonable basis that substantiates their claim. Moreover, Chemence must notify all customers with a letter detailing the FTC allegations and the proper labeling for purchased products.

Chemence’s historic settlement with the FTC suggests that the Commission is heeding Commissioner Chopra’s [calls](#) to “mov[e] away from lax enforcement” concerning “Made in USA” claims.

This most recent enforcement action also comes as the FTC has [proposed](#) its Made in USA Labeling Rule. Last summer’s [NPRM](#) includes the possibility for civil penalties for violations of the rule, and would give the FTC authority over all “Made in USA” claims, including those made online.

In spite of dissent from Commissioners Phillips and Wilson, comments in response to the proposed rule have been largely positive. Supporters cited the current pandemic, noting that consumers are now more likely to buy goods online, resulting in the need for increased oversight of online advertising.

Even still, the NPRM met some pushback from several industry organizations and consumers who question the consistency of the proposed rule with respect to FTC precedent, trade agreements, and, echoing Commissioner Phillips' dissent, FTC jurisdiction. In particular, comments flag that the proposed rule conflicts with USDA precedent, which currently holds that cattle raised in a foreign country and imported for slaughter and processing can qualify for a Made in USA or Product of USA label. It is not clear how this conflict between the two regulatory agencies would play out in practice.

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The FTC has not released a revised rule in response to the comments, though we anticipate that some version of the rule will likely come into effect. "Made in the USA" enforcement has been a high-priority for the FTC in recent years, and with the potential for a new Democrat chair leading the Commission, we expect this trend to continue. Please contact any of the attorneys in Kelley Drye's Advertising Group if you would like assistance with Made in USA compliance.



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