

Top 5 Tips for Avoiding “Made in USA” Enforcement in 2019

Alexander I. Schneider

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The FTC’s [“Hey Nineteen”](#) blog post caught our attention this past week, and not just for its witty title. One of those reasons is the reference to continued interest in “Made in USA” claims. As we’ve written about [here](#), “Made in America” has been a frequent enforcement target in recent years and 2018 generally continued this trend. Here’s how it stacked up:



The FTC completed 25 investigations, settling four enforcement actions and issuing 21 closing letters.

Similarly, in 2017 the FTC settled two enforcement actions and issued 22 closing letters. All indications are that these trends will continue in 2019.

So what can companies do to avoid being the subject of an upcoming FTC Business Center blog post? Here are some tips:

Tip #1: Audit Inventory Management Systems and Processes

Mistakes can launch FTC investigations, as one company learned this past year.

In response to inquiries from the FTC, Prime-Line Products Company, a maker of corner shields, stated that after depleting its inventory of US-made corner shields, it substituted identical imported corner shields. Then, apparently inadvertently, the company continued to apply the “Made in USA” label.

Eventually, the FTC closed its investigation without bringing an enforcement action against the company. But the case serves as a reminder to companies employing the “Made in USA” label to closely manage inventory. If only a percentage of supply is sourced to the US, companies should create internal processes to avoid mislabeling inventory.

Of course, inventory management can become challenging, especially when working with multiple

dealers, distributors, or resellers that may not be familiar with inventory changes. Companies should proactively develop a compliance plan to ensure marketing remains accurate in all sales channels.

Tip #2: Train Employees

Employees, from marketing and sales to the warehouse floor, are the first line of defense against false “Made in USA” claims. Employees should be aware of when “Made in USA” claims may be made, and should be trained on processes for alerting management if they observe any inadvertent errors.

As detailed in multiple closing letters, companies targeted by FTC investigations told the FTC that they would retrain staff on proper, non-deceptive claims. This common-sense approach is advisable for all companies. All training materials should conform to the standards laid out by the FTC in its [Complying with the Made in USA Standard](#) guidance, but should also be practical and easy-to-use. Checklists, webinars, and workplace posters are good options for educating a company’s workforce.

Tip #3: Qualify Advertising Claims

Last year’s cases show that investigations skewed toward plain, unqualified “Made in USA” claims. Qualified claims, which provide more detail about a component made domestically or process that occurred domestically, may take up more space or obscure a company’s marketing message. Nevertheless, when it comes to “Made in USA” labeling, accuracy counts.

In one example from the last year, The Gillette Company, LLC, was the target of an FTC inquiry due to its “Boston Made Since 1901” advertising. The FTC closed its investigation, but the example is instructive. Gillette has deep roots in Boston and sought to use this information in an advertisement. But without a qualification, the FTC viewed the advertisement as asserting that all of Gillette’s products are made in the US. Gillette stated that it would re-focus its advertising campaign to highlight its Boston-based employees and manufacturing and the FTC closed the matter.

Tip #4: Size Doesn’t Matter

When it comes to enforcement of the “Made in USA” standards, there is no safe harbor for small businesses. Companies large and small were the target of investigations in 2018.

That included large companies, like Hallmark Cards, Incorporated, and IKEA Purchasing Services (US), Inc. The FTC closed investigations into each of these companies via a closing letter, without further action.

Meanwhile, the FTC’s major enforcement actions of the year were primarily against small or mid-size companies. Underground Sports Inc. d/b/a Patriot Puck imported just 400,000 hockey pucks since January 2016, but faced a significant enforcement action. Notably, American-made claims featured prominently in these companies’ advertising. Indeed, their conduct was so objectionable, that following announcement of these settlements, [discussion has arisen](#) regarding monetary penalties for false “Made in USA” claims.

Tip #5: Act Now! Financial Penalties May Be Coming

FTC commissioners are very publicly debating the merits of imposing financial penalties for false “Made in USA” claims.

A leading advocate has been Commissioner Rohit Chopra, who argued in a [dissent](#) that settlements have been too lenient and are not deterring similar conduct. But, [as reported in December in this](#)

[blog](#), Chairman Joseph Simons too is focused on the potential need to impose monetary relief. At a hearing before the Senate Subcommittee on Consumer Protection, Product Safety, Insurance, and Data Security, Simons said, “Now we’re exploring whether we can find a good case that would be appropriate for monetary relief to serve as an additional deterrent.”

Given the political interest in increasing the penalties for false claims, companies may want to (make and actually stick to) a New Year’s resolution to make sure their “Made in USA” claims are substantiated. If you’re new to this area or need a refresher, check out our [webinar and materials here](#).