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## 'Made in USA' label still carries punch after two FTC settlements

The Federal Trade Commission recently reached its second settlement in just over a month in connection with misleading "Made in USA" advertising claims.

The designation has become a point of pride for many U.S.-based companies in recent years, but as the FTC's recent actions against two companies show, companies can easily run afoul of the FTC's standard for claiming that their product is Made in USA and — sometimes inadvertently — make unsubstantiated advertising claims.

Block Division Inc., a Texas-based distributor of industrial pulley block systems, allegedly deceived consumers with false, misleading and unsupported claims that its pulley blocks and other products are Made in USA, according to the FTC.

Block Division represented that its products were "Made in USA" on its website, in stores, through trade shows and authorized dealers, on social media and through flyers and pamphlets.

In actuality, the company's pulley blocks and other products included significant imported parts essential to the function of those products. In addition, for years Block Division's pulleys used imported steel plates that arrived in the United States already stamped "Made in USA."

Block Division's claims violated the FTC's "Made in USA" standard, which dictates that manufacturers and marketers cannot indicate, either expressly or implicitly, that a whole product line is of U.S. origin if it actually isn't.

Product promoters must be able to show that "all or virtually all" of a product is made in the United States, meaning that "all significant parts, processing and labor that go into the product

must be of U.S. origin," under the standard.

The settlement announced March 8 bars Block Division from making unqualified "Made in USA" claims about any product unless the company can show that all significant processing and final assembly of the product occurred in the United States.

Block Division also had to prove that "all or virtually all" components of the product were made and sourced in the United States.

The Block Division settlement comes a little more than a month after the FTC announced a similar accord with iSpring Water Systems LLC. The agency alleged that the Georgia-based distributor of water filtration systems made false or misleading claims on its own website or via third parties, including Amazon, Overstock, Sears, Home Depot and Walmart, that its water filtration systems and parts were "Built in USA" and "Proudly Built in the USA."

According to the FTC's enforcement action, however, iSpring's products were either "wholly imported or are made using a significant amount of inputs from overseas."

Like Block Division, iSpring can only say its products are



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product contains foreign parts, ingredients, or processing, or any combination thereof.

With a few notable exceptions, no law requires manufacturers and marketers to disclose the extent to which their products are made in the United States. If a business does decide to designate its products that way, it doesn't need FTC approval before doing so — but it does need to be able to back it up.

The exceptions are automobiles, and textile and wool products, which by law must disclose

Labeling Act requires that automobiles manufactured on or after Oct. 1, 1994, for sale in the United States bear a label disclosing where the car was assembled, the percentage of equipment that originated in the United States and Canada and the country of origin of the engine and transmission.

So what exactly does "all or virtually all" mean?

According to the FTC, it means that "all significant parts and processing that go into the product must be of U.S. origin. That is, the product should contain no — or negligible — foreign content." However, there are various degrees of "Made in USA" claims. Following its review of the standard in 1997, the FTC issued guidance to marketers on making unqualified and qualified "Made in USA" claims.

To make an unqualified claim that a product is "Made in USA," a company should have a "reasonable basis" to support the claim at the time it is made. In sum, a manufacturer or marketer must have competent and reliable evidence to support the "all or virtually all" claim.

To determine whether a product is "all or virtually all" made in the United States, the product's final assembly or processing must take place in the U.S. The FTC also considers other factors including how much of the product's total manufacturing costs can be assigned to U.S. parts and processing and how far removed any foreign content is from the finished product.

For example, a company that manufacturers propane barbecue grills at a plant in Nevada, except for the grill's knobs and tubing that are imported from Mexico, can still say the grills are "Made in USA." The FTC explains that the designation is not deceptive because the imported

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"Made in USA" if it can show "all or virtually all" of the components are made and sourced in the United States. The settlement order allows iSpring to make qualified "Made in USA" claims if they include a "clear and conspicuous disclosure" about the extent to which the

where they were made. Under the Textile and Wool Acts, products must be labeled to identify the country where they were processed or manufactured.

Products made in part in the United States and in part abroad must identify both components. The American Automobile

parts “make up a negligible portion of the product’s total manufacturing costs and are insignificant parts of the final product.”

On the other hand, a qualified “Made in USA” claim indicates that the product isn’t entirely manufactured domestically. This type of claim must detail the extent, amount or type of domestic content or processing involved.

The FTC cites several ways to state a qualified claim, including “60 percent U.S. content,” “Made in USA of U.S. and imported parts,” or “Couch assembled in USA from Italian Leather and Mexican Frame.”

A qualified claim can be appropriate when a product does not meet the criteria for an unqualified claim. However, the FTC points out, manufacturers and marketers must be careful not to imply that more domestic

content exists in a product than actually does. The agency recommends avoiding qualified claims unless the product involves a significant amount of U.S. content or U.S. processing.

Qualified “Made in USA” claims also shouldn’t be generalized. Such claims should clearly refer to the specific process or part, not to the general manufacture of the product, in order to avoid implying that more U.S. content exists. In fact, manufacturers and marketers should be careful about using general terms such as “produced,” “created” or “manufactured” in the United States without more description, warns the FTC.

Sometimes the “Made in USA” designation won’t apply at all. If a company designs a product in New York City and sends the blueprint to a factory in Finland for manufacturing, the product

label may say “Designed in USA — Made in Finland.” The FTC notes that such a specific processing claim “would not lead a reasonable consumer to believe that the whole product was made in the U.S.”

Comparative claims made by marketers must also be truthful and presented in a way that makes the basis for comparison clear. Statements should truthfully describe the product’s U.S. content and be based on a meaningful difference in U.S. content between the compared products.

An ad for a cellular phone might state: “We use more U.S. content than any other cellular phone manufacturer.” This comparative claim is not deceptive as long as the manufacturer can prove that the difference between the U.S. content of its phones and that of the other manufacturers’ phones is

significant, explains the FTC.

The two recent settlements may help raise awareness about the FTC’s standard and the agency’s efforts to enforce it. As Acting FTC Chairman Maureen Ohlhausen said of the Block Division settlement, “Consumers have the right to know that they can trust companies to be truthful when it comes to ‘Made in USA’ claims. This is an important issue for American business and their customers, and the FTC will remain vigilant in this area.”

The fact that the standard is not an all-or-nothing proposition, but permits degrees of qualified statements in addition to the unqualified “Made in USA” designation gives companies the opportunity to tailor their disclosures while protecting consumers from misleading information.