UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Consumer Protection
Division of Enforcement

Julia Solomon Ensor
Attorney

Email: jensor@ftc.gov
Direct Dial: (202) 326-2377

November 18, 2021

VIA EMAIL

Stacy R. Hegge, Esq.
Gunderson, Palmer, Nelson and Ashmore, LLP
11 West Capitol Ave., Suite 230
Pierre, SD 57501
shegge@gpna.com

Dear Ms. Hegge:

We received your submissions on behalf of Designing Fire of South Dakota, Inc., d/b/a Designing Fire, Inc. ("Designing Fire" or the "Company"). During our review, we discussed concerns that marketing materials may have overstated the extent to which the Company's products are made in the United States. Specifically, although Designing Fire employs workers and performs manufacturing functions in the United States, the Company's Oriflamme Fire Tables incorporate imported tops, and certain accessories and other products are wholly imported.

As discussed, unqualified U.S.-origin claims in marketing materials – including claims that products are "Made" or "Built" in the USA – likely suggest to consumers that all products advertised in those materials are "all or virtually all" made in the United States.[1] The Commission may analyze a number of different factors to determine whether a product is "all or virtually all" made in the United States, including the proportion of the product's total manufacturing costs attributable to U.S. parts and processing, how far removed any foreign content is from the finished product, and the importance of the foreign content or processing to the overall function of the product. The FTC recently codified the "all or virtually all" standard into a Made in USA Labeling Rule, 16 C.F.R. § 323 (the "MUSA Rule").[2]

---

[1] FTC, *Issuance of Enforcement Policy Statement on "Made in USA" and Other U.S. Origin Claims*, 62 Fed. Reg. 63756, 63768 (Dec. 2, 1997) (the "Policy Statement"). Additionally, beyond express "Made in USA" claims, "[d]epending on the context, U.S. symbols or geographic references, such as U.S. flags, outlines of U.S. maps, or references to U.S. locations of headquarters or factories, may, by themselves or in conjunction with other phrases or images, convey a claim of U.S. origin." *Id.*

[2] Effective August 13, 2021, it is a violation of the MUSA Rule to label any covered product "Made in the United States," as the MUSA Rule defines that term, unless the final assembly or processing of the product occurs in the United States, all significant processing that goes into the product occurs in the United States, and all or virtually all ingredients or components of the product are made and sourced in the United States. *See* https://www.federalregister.gov/documents/2021/07/14/2021-14610/made-in-usa-

For a product that is substantially transformed in the United States, but not "all or virtually all" made in the United States, the Policy Statement explains, "any claim of U.S. origin should be adequately qualified to avoid consumer deception about the presence or amount of foreign content . . . . Clarity of language, prominence of type size and style, proximity to the claim being qualified, and an absence of contrary claims that could undercut the effectiveness of the qualification will maximize the likelihood that the qualifications and disclosures are appropriately clear and prominent."[3]

In appropriate situations, even if a particular product is not "all or virtually all" made in the United States or substantially transformed in the United States, "a marketer may make a claim that a particular manufacturing or other process was performed in the United States, or that a particular part was manufactured in the United States, provided that the claim is truthful and substantiated and that reasonable consumers would understand the claim to refer to a specific process or part and not to the general manufacture of the product."[4] For example, a marketer may be able to substantiate a non-deceptive claim that a foreign-origin product is "Designed" in the United States. In that case, the marketer could make this claim as long as it does not imply the product is of U.S.-origin, and the marketer does not omit or obscure any required foreign-origin labeling.

As discussed, it is appropriate for Designing Fire to promote the fact that it employs workers and performs certain functions in the United States. However, marketing materials should not convey that products are "all or virtually all" made in the United States unless the Company can substantiate those claims. Accordingly, to avoid deceiving consumers, Designing Fire removed unqualified U.S.-origin claims from all marketing materials, including social media, and required dealers to update marketing materials consistent with this change.

FTC staff members are available to work with companies to craft claims that serve the dual purposes of conveying non-deceptive information and highlighting work done in the United States. Based on Designing Fire's actions and other factors, the staff has decided not to pursue this investigation any further. This action should not be construed as a determination that there was no violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. The Commission reserves the right to take such further action as the public interest may require. If you have any questions, please feel free to call.

Sincerely,

Julia Solomon Ensor
Staff Attorney

Lashanda Freeman
Federal Trade Investigator

---

labeling-rule. Pursuant to 15 U.S.C. § 45(m)(1)(A), the Commission may seek civil penalties of up to $43,792 per MUSA Rule violation.

[3] Policy Statement, 62 Fed. Reg. 63756, 63769.

[4] *Id.* at 63770.