

An FTC Twofer – Made In USA Claims and Selfie/Self-Certification Marks

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Last week the FTC published a [Complaint](#) and proposed [Consent Order](#) in *In re Bollman Hat Company et al.* addressing two hot topics: Made in USA ad claims, which have been an agency focus for decades, and “selfie” and self-certification marks, a more recent regulatory interest. Avid readers of this blog will know that we’ve also covered both [Made in the USA claims](#) and [selfie-certification marks](#) before.

Related Capabilities

- Trademark, Copyright + Advertising
- Intellectual Property Litigation

The Made in USA issue was relatively straightforward. Pennsylvania-based Bollman advertised its hats with the claims “Made in USA since 1868, “Made in the USA for 100 Years or More” and #madeintheusa. But more than 70% of its hat styles were wholly imported as finished products. Other styles contained significant imported content. Under longstanding FTC guidelines and enforcement precedents, a company may not make a Made in USA ad claim -- referred to as an “*unqualified*” U.S. origin claim -- unless all or virtually all ingredients or components of the product are made and sourced in the United States and all significant processing takes place in this country. *Qualified* U.S. origin claims, which contain caveats, qualifying or limiting language, must clearly and conspicuously disclose the extent to which the product contains foreign components. Further, qualified claims must not use phrases such as “built”, “produced” or “created” in the USA that misleadingly convey the impression that the product was entirely manufactured in the United States.

The FTC also raised two issues concerning Bollman’s use of a certification seal on its products featuring the phrase “American Made Matters – Choose American.” The seal originated with a wholly-owned subsidiary of Bollman named SaveAnAmericanJob, LLC, which jointly conducted business with Bollman as “American Made Matters” to market the use of the seal to other companies. Permission to use the seal was granted for a

\$99 annual licensing fee to any company claiming that it had a United States-based manufacturing facility or one product with a U.S.-origin label and could self-certify that at least 50% of the cost of at least one product was incurred in the U.S. Based on this self-certification, Bollman and SaveAnAmericanJob promoted member companies on a website and in social media, but did not do anything to independently evaluate members' compliance with the membership standards.

The first problem with the American Made Matters – Choose American seal was the selfie-certification aspect. When Bollman used a seal that its own subsidiary created to certify its own hat products, it conveyed the misleading impression that an independent organization had evaluated and endorsed their products as American-made. The FTC isn't banning "selfie-certification" marks, but it is requiring that companies clearly and conspicuously disclose on product labeling and advertising their material connection to the certifying organization. Second, if member companies "self" certify their own products without any independent evaluation or compliance monitoring, that fact must be disclosed and Bollman must not know or have reason to know that the self-certification is misleading. Alternatively, Bollman must undertake an "independent and objective evaluation, audit, or verification check" to confirm that the products or services it is certifying meet the certification standard.

The proposed Consent Order does not impose a monetary fine, but does require Bollman and its affiliates to submit compliance reports, maintain certain records for 20 years and submit to compliance monitoring by the FTC.