

Made in the USA? It Better be!

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A recent Federal Trade Commission ("FTC") settlement reinforces the need for companies to substantiate MADE IN THE USA product claims in advertisements.

Gennex Media LLC and its owner, Akil Kurji, recently found themselves the subject of an FTC investigation regarding claims made on their Brandnex website, social media sites, and in a YouTube video that their customizable promotional products (including items such as wristbands, lanyards, temporary tattoos, and buttons) were “Made in USA,” “USA MADE,” and “Manufactured Right Here in America!” As it turns out, many of these products were not made in the United States and were actually wholly imported from China. As a result of these violations, which date back 2012, Gennex and Kurji were collectively ordered to pay the Commission a monetary judgment of \$146,249.

The proposed order prohibits Gennex and Kurji from making unqualified U.S.-origin claims for any product, unless (1) 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; or (2) a clear and conspicuous qualification appears immediately adjacent to the representation that accurately conveys the extent to which the product contains foreign parts, ingredients or components, and/or processing; or (3) for a claim that a product is assembled in the United States, the product is last substantially transformed in the United States, the product’s principal assembly takes place in the United States, and United States assembly operations are substantial. The order defines “Made in the United States” as any representation, express or implied, that a product or service, or a specified component thereof, is of U.S.-origin, including, but not limited to, a representation that such product or service is “made,” “manufactured,” “built,” “produced,” or “crafted” in the United States or in America, or any other U.S.-origin claim.

This case is an important reminder for companies to ensure compliance with FTC guidelines regarding U.S. origin claims. Here are some best practices to keep in mind when making US origin claims, based on the FTC’s Made in the USA Policy:

- U.S. content *must be* disclosed on automobiles and textile, wool, and fur products. Disclosure is not required on most other products sold in the United States.
- The FTC’s Made in the USA policy applies to all products advertised or sold in the United States, except for those specifically subject to country-of-origin labeling by other laws.
- The FTC’s Made in the USA policy applies to all origin claims that appear on products and labeling, advertising, and other promotional materials, and also to all other forms of marketing, including digital or electronic mechanisms, such as internet or e-mail.
- Made in the USA claims can be express or implied, but the policy applies to both.
- Preapproval of Made in the USA claims is not required. Any manufacturer or market may make the claim, so long as it is truthful and substantiated.
- The standard for a product to be called Made in the USA *without qualification* is that the product must be “all or virtually all” made in the United States. The elusive phrase “all or virtually all” means that all significant parts and processing that go into the product must be of U.S. origin and should contain no (or negligible) foreign content.
- To substantiate a Made in the USA claim, a manufacturer or marketer needs competent and reliable evidence to back up the claim that its product is “all or virtually all” made in the United States.
- 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 United States. Other factors, such as 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, are also considered.

- A *qualified* Made in USA claim describes the extent, amount, or type of a product's domestic content or processing but also indicates that the product is not entirely of domestic origin.
- Qualified Made in the USA claims are appropriate for products that include U.S. content or processing but do not meet the criteria for making an unqualified Made in USA claim. Because these claims can be misleading in terms of the amount of domestic content that exists, manufacturers and marketers should avoid qualified claims, unless the product has a significant amount of U.S. content or U.S. processing.
- Terms such as "produced," "created" or "manufactured" in the United States should be avoided when referencing that a particular manufacturing or other process was performed in the United States, as these terms suggest a broader application than just a specific process and may be misleading.

The FTC's Enforcement Policy Statement can be found here: [Enforcement Policy Statement on U.S. Origin Claims | Federal Trade Commission \(ftc.gov\)](#).