

Chinese Companies Should be Aware of Federal Trade Commission (FTC) Final Rule Regarding “Made in USA” Claims

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As Chinese companies establish subsidiaries, partnerships, and joint ventures in the United States, as part of strategic plans to shift all or some portion of their manufacturing to the US, they should be aware of legal considerations in advertising their products as “Made in the USA.” The Federal Trade Commission (“FTC”) issued a new final rule on such US-origin claims on August 13, 2021. Companies are cautioned that using “Made in USA” on products requires substantial analysis and supporting documentation.

The final rule follows a Notice of Proposed Rulemaking (NPRM) published on July 16, 2020, and public comment. The NPRM proposed to codify the established principle that unqualified U.S.-origin claims imply to consumers that no more than a *de minimis* amount of the product is of foreign origin. If the product does not meet this standard, it should not make an unqualified US-origin claim; instead, it should make a “qualified” claim (an example of a qualified claim is “Assembled in USA of Foreign Components”).

The FTC’s Final Rule codifies the FTC’s previous Decisions and Orders, and prohibits marketers from making unqualified Made in USA claims on labels, unless:

1. Final assembly or processing of the product occurs in the United States,
2. all significant processing that goes into the product occurs in the United States, and
3. all or virtually all ingredients or components of the product are made and sourced in the United States.

The rule also covers labels making unqualified Made in USA claims appearing in mail order catalogs or mail order advertising. Importantly, the rule specifies that it does not supersede, alter, or affect any other Federal or State statute or regulation relating to country-of-origin labels, except to

the extent that a State country-of-origin statute, regulation, order, or interpretation is inconsistent with the rule.

Any violation of the Final Rule is treated as an unfair and deceptive act or practice.

Although the FTC will, on occasion, exempt products from the “all or virtually all” standard, Chinese companies involved in US manufacturing should be aware of the legal risk of claiming “Made in USA,” without the supporting analysis and documentation required by the new standard.

Nexsen Pruet attorneys are available for “Made in USA” consultations at any time.