

Highlights of the FTC's Workshop on Made in the USA Claims

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In Fleetwood Mac's magnum opus, "[Landslide](#)," Stevie Nicks croons, "Well, I've been 'fraid of changin' 'cause I've built my life around you." The FTC's recent [workshop](#) on Made in the USA claims reveals a similar hesitancy to evolve, although panel discussions may presage altered approaches to enforcement of these claims. This workshop, held on September 26, consisted mainly of three panel discussions on various aspects of this issue. While the discussions often ventured into nuanced and lively discourse, this post focuses on the main takeaways from the event.

Andrew Smith, Director of the Bureau of Consumer Protection at the FTC, opened the workshop by outlining the FTC's three-pronged approach to these kinds of claims:

1. Targeted litigation for egregious offenders (see October 2016 [Chemence](#) case)
2. Informal feedback to companies that want to comply
3. Guidance to companies who do not meet the standard, followed by the issuance of closing letters

Consumer Perception of Made in USA Claims

Shiva Koohi, an economist at the FTC's Bureau of Economics, presented on consumer perception research, which has found that consumers are more likely to agree with a U.S.-origin claim based on whether it was assembled in the United States and the greater portion of costs – both parts and labor – that were incurred in the United States. She noted that there is a disagreement among consumers over the level of domestic content required in order for a product to qualify as Made in the USA, and she acknowledged that in real world transaction data, country of origin is often superseded by other attributes such as quality, brand, or price.

The panel also considered whether consumer perception of U.S.-origin claims has changed over time. The panelists pointed to mixed results in their respective studies. Scott Paul, representing the Alliance for American Manufacturing, noted that his research from 2010-2018 has shown consistency in consumer perception. Mark Hanna of the Richline Group, a precious metals manufacturer,

described an increased focus on the importance of transparency and an ethical supply chain to customers, particularly among millennials. He said a “Made in USA” mark can signify to consumers that a product is “socially correct.”

Consumer Perception of Qualified Claims

The moderators then asked about whether there had been any consumer perception testing about qualified claims, for instance, a product labeled, “Made in the USA with Japanese materials.” Hanna said the opinion of executives within his industry is that qualified claims could weaken the product, though this has not been tested empirically. Kristen Kern, from the American Apparel & Footwear Association, noted, as the discussion wrapped up, that she would like clearer content guidelines for Made in the USA claims that would outline for both sellers and customers what the mark means.

The FTC expressed interest in consumer perception testing that shows the nuances of how consumers react to different Made in the USA claims, including issues such as:

- Whether consumers care if raw materials for a product aren’t available in the US
- Whether there is variation in consumer perception for different sales platforms
- Whether there is variation of consumer perception depending on the competitors (if one competitor has moved jobs overseas while another has re-shored jobs, for instance)
- What point in the production chain must be located in the United States for consumers to consider a product “Made in the USA”

Julia Ensor of the FTC emphasized that insight on these issues is important because the FTC’s current standard is based on consumer perception, so the standard will not change unless it reflects consumer perception.

Enforcement of Made in the USA Claims

The second panel, moderated by Laura Koss, an Assistant Director in the FTC’s Enforcement Division, explored challenges facing consumers and sellers under the current FTC framework. Unsurprisingly, the mix of industry representatives and consumer organizations held divided opinions on this issue, with business leaders expressing difficulty with compliance and frustration with the strict standard, while leaders of organizations geared toward consumers supported the maintenance of a strict labeling standard for Made in the USA.

Some panelists expressed issues and confusion resulting from the inconsistencies between the Made in the USA regulation and similar policies from other agencies and states. Pete Wicks, of The Homer Laughlin China Company, noted that the [Buy American Act](#) has a lower standard than the “all or virtually all” standard of Made in the USA. Mark Hanna pointed out that under U.S. Customs regulation, many manufactured products are classified as U.S. products but not eligible for the Made in the USA mark. Tim Schade, of Lifetime Products, pointed to the [California standard](#), which is based on availability as well as the percentage of cost or value, a guideline that could fall short under the FTC standard (see further discussions of the California standard [here](#) and [here](#).)

Looking forward: New Horizons and Insights from the FTC

One developing issue in which the FTC moderators were interested was the deceptive marketing of products as “Made in the USA” by foreign bad actors using online marketplaces, such as Amazon. None of the panelists were aware of this being a significant issue, although they did acknowledge the issues with fraud and deception in general on online marketplaces.

From this workshop, it seems that the FTC is still focused on consumer perception as the primary determinant of the Made in the USA standard. Any modification of this standard would have to result from a change in consumer perception of what the mark entails. Based on options floated by panel moderator Julia Ensor, the FTC may be open to changing its approach to enforcement, either by increasing aggressive litigation, imposing civil penalties for violations, or making a new rule in this area.

As Stevie Nicks points out, children get older, and as the FTC’s standard for “Made in the USA” is getting older too, perhaps the FTC will yield to industry pressure and consider a more nuanced or clear standard. For now, however, consumer perception and the “all or virtually all” standard reign supreme, and manufacturers should be on the lookout for new approaches to enforcement of these claims.

The FTC invited the public to [comment](#) on this issue now through October 11.

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