FTC and private litigants increase scrutiny of Made in the USA claims

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With the Trump Administration's renewed emphasis on domestic manufacturing, the Federal Trade Commission (FTC) is front and center on ensuring that companies' marketing accurately describes the extent of foreign and domestic inputs into their goods.

On July 1, the FTC designated July as "Made in the USA" (MUSA) month (https://bit.ly/3H659Fj), and on July 8, the FTC published warning letters to manufacturers and retailers of flagpoles (https://bit.ly/4mfH8dW), footwear (https://bit.ly/40CmwV0), football equipment (https://bit.ly/41fdVHV) and personal care products (https://bit.ly/40E1qW6), informing them that the FTC had received information suggesting they may be violating FTC laws surrounding MUSA claims. In addition to this FTC activity, we are also seeing activity in this area in private litigation under state law and self-regulatory organizations.

Background on FTC MUSA enforcement

Both recent FTC announcements noted the FTC's role in enforcing its MUSA Labeling Rule (https://bit.ly/4kXBDQ2) and the FTC Act's general prohibition on deceptive advertising and marketing, which applies to claims about products' domestic origin. For decades, the FTC has used its general authority under Section 5 of the FTC Act against companies for allegedly deceiving consumers about their products' U.S. domestic origin.

And in 1994, Congress added a provision to the FTC Act authorizing the FTC to issue regulations about labeling products as "Made in the USA," "Made in America," or other equivalent language, "in order to represent that such product was in whole or substantial part of domestic origin." But the FTC did not use that authority until 2021, when it finalized the MUSA Labeling Rule.

Under both Section 5 of the FTC Act and the newer MUSA Labeling Rule, the FTC applies the same legal standard to "unqualified" MUSA claims. Unqualified claims include the specific phrase "Made in the United States," as well as product labels that have the same essential meaning, such as "American-made," "Crafted in USA," and the like.

Qualified claims of US origin, on the other hand, include phrases like "Made in USA with Imported Materials," "Assembled in USA," or similar phrases that indicate a limited amount of domestic content or processing.

For unqualified MUSA claims, the FTC considers them deceptive unless:

(1) The good or part is subject to final assembly or processing 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.

This standard dates back to 1997, when the FTC issued its Enforcement Policy Statement on US Origin Claims (https://bit.ly/40E3q0x). This "all or virtually all" standard has been enforced through bipartisan actions under FTC leadership from both political parties.

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Since the FTC applies the same legal standard to Section 5 and the MUSA Labeling Rule, it might seem like they are duplicative. But unlike Section 5, the MUSA Labeling Rule provides a means for the FTC to seek civil penalties up to $53,088 per violation. Under Section 5, however, a 2021 U.S. Supreme Court opinion limits the FTC to seeking "consumer redress" to provide refunds to deceived consumers in egregious cases of "dishonest or fraudulent" conduct.

As a result of that difference in monetary authority, in 2021, the FTC crafted its MUSA Labeling Rule broadly. The statute authorizing the FTC to issue the MUSA Labeling Rule specifically limits that authority to address claims on a "label." (https://bit.ly/44ZmpEc) But the FTC's MUSA Labeling Rule takes an expansive view of the meaning of a "label," defining it to cover not only physical labels on a product or its packaging, but also any online marketing materials that include a depiction of a "seal, mark, tag, or stamp labeling a product Made in USA."

To date, no court has ruled on a challenge to the FTC's expanded scope of the rule. And recent updates to the FTC's business guidance (https://bit.ly/4kUyAYQ) for complying with the MUSA Labeling Rule indicate the new Chairman endorses both the "all or virtually all" standard and the expansive definition of "label."

Increased private litigation and self-regulatory challenges addressing MUSA claims

The same factors driving FTC interest in MUSA claims appear to be at play in private litigation and companies challenging their competitors' advertising. According to a June 2025 Wall Street Journal article (https://on.wsj.com/3UBR0mh), 13 proposed class-action suits over "Made in USA" claims had been filed in 2025 through the publication of the article, compared with seven during all of 2024. The article noted that these class actions spanned several industries, ranging from men's health care and toiletries to food and beverages.

One of these class actions highlighted the intersection between state law and the FTC's MUSA Labeling Rule. In *McCory v. McCormick & Company*, No. 1:25-cv-00231-JLT-SAB, 2025 WL 1918546 (E.D. Cal., July 11, 2025), a case brought against a mustard manufacturer under California law, the defendant sought to apply statutory safe harbors for: (1) products that contain components or inputs that cannot be sourced domestically, so long as those foreign components comprise no more than 10% of the product's final wholesale value; or (2) products for which no more than 5% of the wholesale value is obtained from outside the US.

In an opinion dated June 11, a federal magistrate judge ruled that this safe harbor is not preempted by the FTC's MUSA Labeling Rule, because the FTC's "all or virtually all" standard is not inconsistent with allowing for 5-10 percent of foreign materials, and "it is not impossible for a product to be lawfully labeled" as MUSA under both the MUSA Labeling Rule and the California law. Plaintiff objected to the magistrate's findings, which will now be reviewed by the district court judge.

Outside of court, companies can also challenge their competitors' MUSA claims through a self-regulatory process administered by BBB National Programs' National Advertising Division (NAD). On July 1, 2025, NAD issued a press release (https://bit.ly/4mhDEaV) about a matter in which a conveyor belt manufacturer argued a competitor falsely advertised its products as being made in the USA. According to the NAD press release, the company facing the challenge voluntarily agreed to discontinue all such advertising.

And in 2024, a tool and saw manufacturer challenged its competitor's MUSA advertising. In that matter (https://bit.ly/3lKoRag), the NAD agreed with the challenger that the competitor made prominent claims explicitly stating its products were "Made in America," and that disclosures that the products contained both US and "global materials" were not adequate to cure the deceptive claims.

Although participation in NAD's self-regulatory process is voluntary, if an advertiser refuses to participate or refuses to comply with NAD's recommendations, NAD typically refers the matter to the FTC and issues a press release about the referral. The matter may receive priority treatment from the FTC, and the FTC publishes resolution letters (https://bit.ly/453GF7L) that detail its actions on NAD referrals.

Takeaways for manufacturers and marketers

Based on increased regulatory scrutiny from the FTC, class action risk, and the threat of challenges from competitors, manufacturers and marketers should carefully evaluate whether their advertising and product labels make unqualified MUSA claims and they have adequate substantiation for any claims that are made. They should also routinely review advertising and labeling to ensure consistency with current sourcing and production, which may shift rapidly in the current supply chain environment.

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