

\$1M Settlement Shows FTC's Growing Focus On Origin Claims

By **Laura Kim, Yaron Dori and Claire O'Brien** (April 6, 2020, 6:12 PM EDT)

The U.S. Federal Trade Commission recently announced that Williams-Sonoma Inc. agreed to pay \$1 million to settle allegations that the company deceived consumers by making overly broad and misleading origin claims about its housewares and furniture products.[1] Williams-Sonoma allegedly claimed that certain products either wholly imported, or containing significant imported materials or components, were “Made in America” or “Made in the USA.”



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The proposed consent order prohibits Williams-Sonoma from making unqualified U.S.-origin claims for any product unless the company can show that the product’s final assembly or processing — and all significant processing — takes place in the U.S., and that all or virtually all components of the product are made and sourced in the U.S.[2]



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Additionally, the consent order requires that any qualified U.S.-origin claims must include a clear and conspicuous disclosure about the extent to which the product contains foreign parts, components, and/or processing.

To claim that a product is assembled in the U.S., the company must ensure that the product is last substantially transformed in the U.S., its principal assembly takes place in the U.S., and the U.S. assembly operations are substantial.



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The proposed order also imposes standard compliance reporting and record-keeping obligations on the company.

This was not the FTC’s first investigation of Williams-Sonoma. In 2018, consumers complained that Williams-Sonoma products identified in ads and in promotional materials as “crafted in America from local and imported materials” were in fact made in China. At the time, Williams-Sonoma explained the misrepresentation as an isolated instance of human error and committed to a multistep verification process to prevent deceptive country-of-origin claims in the future.

The FTC closed its investigation with a letter on the public record reserving its right to take further action if necessary. The FTC subsequently received reports in May 2019 that Williams-Sonoma was continuing to disseminate ads and promotional materials that deceptively claimed certain categories of Williams-Sonoma products were all or virtually all made in the U.S., triggering the administrative complaint and ultimately the consent order.[3]

Williams-Sonoma's prior conduct may explain why the FTC found monetary relief appropriate in this case. The FTC does not typically seek monetary relief in "Made in USA" cases, and the FTC did not explain its rationale for seeking such relief in this case.

Notably, however, Section 19 of the Federal Trade Commission Act^[4] permits the FTC to bring action in federal court, after an administrative proceeding, to seek consumer redress for injury caused by the conduct at issue in the administrative proceeding. In such cases, the commission must demonstrate that "a reasonable man would have known under the circumstances [that the conduct] was dishonest or fraudulent."

Although Section 19 is not cited in the complaint or the consent order, this infrequently used provision likely provided the legal basis for the FTC to impose the \$1 million monetary judgment on Williams-Sonoma in this case.

The Williams-Sonoma settlement indicates that U.S.-origin claims continue to be an area of focus for the FTC, which held a public workshop last September to enhance its understanding of consumer perception of "Made in the USA" claims and to consider whether the FTC's enforcement of such claims could be improved.^[5]

This workshop followed on the heels of a number of "Made in the USA" enforcement actions pertaining to a wide range of products, including iSpring Water Systems LLC's water filtration systems, Underground Sports Inc.'s hockey pucks, Sandpiper of California Inc.'s backpacks, and Nectar Sleep's mattresses.^[6]

The FTC has not issued regulations specifically addressing "Made in USA" and other U.S.-origin claims. Instead, the 1997 FTC enforcement policy statement on U.S. origin claims provides guidance on how the commission applies Section 5 of the FTC Act to such claims in advertising and labeling (including marketing through digital or electronic mechanisms such as internet or email).^[7]

According to the FTC, for a product to be labeled "Made in USA," or claimed to be of domestic origin without qualifications or limits, the product must be all or virtually all made in the U.S. This means that all significant parts and processing that go into the product must be of U.S. origin; the product should contain no — or negligible — foreign content.

Given this standard, it is not surprising that the FTC took action against Williams-Sonoma's alleged use of "Made in America" and "Made in the USA" claims, as the products at issue allegedly were either wholly imported or contained significant imported materials or components. The fact that the FTC previously investigated Williams-Sonoma in connection with U.S.-origin claims likely contributed to the FTC's decision to both take enforcement action and seek monetary relief in this case.

The \$1 million judgment also is consistent with calls from FTC Commissioner Rohit Chopra to reconsider the FTC's traditional approach to "Made in USA" cases. Specifically, in a separate statement issued in connection with the Sandpiper, Patriot Puck and Nectar Sleep cases, Chopra stated that false or misleading U.S.-origin claims not only cheat Americans who prefer buying domestic goods, it can negatively impact firms that bear higher costs to produce goods in the U.S. while they compete with cheating firms.^[8]

Further, Chopra said widespread deception "sows doubt about the veracity of made in USA claims, which may reduce the claim's value and discourage domestic manufacturing." For these reasons, Chopra

urged the commission to modify its approach to resolving "Made in the USA" fraud to seek more tailored remedies that could include restitution, disgorgement, notice, and admissions of wrongdoing, based on the facts and circumstances of each matter.

In light of the FTC's continued focus on deceptive claims in this area, and calls for more aggressive action from Chopra, companies now more than ever should ensure they are familiar with Section 5 of the FTC Act and the FTC's enforcement policy statement to make sure their "Made in USA" claims are compliant.

Companies should take affirmative steps to ensure that relevant employees (including legal and marketing teams) understand the FTC's U.S.-origin claims policy.

Companies also should implement internal processes to ensure that U.S.-origin claims are routed through their legal department or institute another internal function to confirm substantiation of the claim before new marketing communications are launched, whether in social media or more traditional marketing channels.

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[1] https://www.ftc.gov/news-events/press-releases/2020/03/williams-sonoma-inc-settles-ftc-agrees-stop-making-overly-broad?utm_source=govdelivery.

[2] https://www.ftc.gov/system/files/documents/cases/202_3025_williams-sonoma_consent_agreement-decision_order.pdf.

[3] https://www.ftc.gov/system/files/documents/cases/202_3025_williams-sonoma_admin_complaint.pdf.

[4] 15 U.S.C. § 57b.

[5] <https://www.ftc.gov/news-events/events-calendar/made-usa-ftc-workshop>.

[6] <https://www.ftc.gov/news-events/blogs/business-blog/2019/04/violating-made-usa-order-lands-filtration-seller-hot-water>; <https://www.ftc.gov/news-events/press-releases/2019/04/ftc-approves-final-consents-settling-charges-hockey-puck-seller>.

[7] <https://www.ftc.gov/public-statements/1997/12/enforcement-policy-statement-us-origin-claims>.

[8] https://www.ftc.gov/system/files/documents/public_statements/1407380/rchopra_musa_statement-sept_12.pdf.