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September 14, 2020

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Suite CC-5610 (Annex B)
Washington, DC 20580

**Re: Request for Comments on MUSA Rulemaking, Matter No. P074204
(Docket FTC-2020-0056)**

The Coalition for a Prosperous America (“CPA”) thanks the Federal Trade Commission (“FTC” or “Commission”) for issuing this Notice of Proposed Rulemaking on Made in the U.S.A. and other unqualified U.S.-origin (“MUSA”) claims.

Businesses that lie about MUSA claims must be punished, not just given a warning and penalty of \$0, as has been the case for far too long. CPA is pleased this rule will end that practice.

I. The MUSA rule must apply to online advertisements of a product.

CPA agrees with the legal analysis put forward by Truth in Advertising, Inc.: the proposed rule does not exceed the Commission’s statutory authority. There is nothing in 15 U.S.C. § 45a to suggest that Congress sought to limit the FTC’s rule-making ability in MUSA claims to physical labels.

Failure to extend the MUSA rule will mean failure for the entire policy. One has to only search the internet for “Made in USA” followed by any product to find that fraud has completely taken over online advertising (See, e.g., Exhibit 1).

Regrettably, even our nation’s largest retailers and advertisers seem entirely unconcerned with MUSA fraud, not just by purchasing fraudulent “made in USA” search engine ads, but also by allowing their websites to contain listings generated by third party vendors that further MUSA fraud. (See, e.g., Exhibit 2).

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FTC's current MUSA guidance is not sufficient for the marketplace to understand and take seriously.

II. The standard embodied in the proposed Rule should be amended to apply to qualified, as well as unqualified, claims of U.S. origin.

a. The need for enforcement against false, deceptive, or misleading qualified claims is as great as with respect to unqualified claims.

There is a proliferation of labels making qualified claims as to the U.S. origin of products in which a prominent "Made in USA" claim is made, typically in conjunction with display of an American flag, followed by a less prominent qualification such as "with globally sourced materials." These claims have the potential to mislead consumers as to the origin of the labeled products, giving them the false impression that the product is "made in the USA", and leaving them with little information as to what the extent of U.S. content of the product might actually be.

Enforcement of the Commission's standards for deception in this realm is as important as in that of unqualified claims of U.S. origin.

b. Therefore, the proposed Rule should be revised to incorporate the standards of the Policy Statement with respect to qualified claims, in languages such as the following:

This proposed language is excerpted from the Commission's Enforcement Policy Statement on U.S. Origin Claims ("Policy Statement"):

Where a product is not all or virtually all made in the United States, any claim of U.S. origin shall be adequately qualified to avoid consumer deception about the presence or amount of foreign content.

A marketer may make any qualified claim about the U.S. content of its products as long as the claim is truthful and substantiated.

A qualified claim of a general U.S. origin claim accompanied by qualifying information about foreign content (*e.g.*, "Made in USA of U.S. and imported parts" or "Manufactured in U.S. with Indonesian materials") may be made only where the last assembly, processing, or finishing of the product occurred in the United States and the product was last substantially transformed in the United States.

Regardless of whether a product as a whole is all or virtually all made in the United States, a marketer may make a claim that a particular manufacturing or other process was performed in the United States, or that a particular part was manufactured in the United States, provided that the claim is truthful and substantiated and that reasonable consumers would understand the claim to refer to a specific process or part and not to the general manufacture of the product.

A product may be labeled or advertised as "Assembled in the United States" without further qualification only in those instances where the product has undergone its principal assembly in the United States and that assembly is substantial, and the product has been last substantially transformed in the United States.

c. The Commission has authority to promulgate a Rule establishing standards for qualified MUSA claims under 15 U.S.C. 45a.

15 U.S.C. 45a provides in relevant part:

To the extent any person introduces, delivers for introduction, sells, advertises, or offers for sale in commerce a product with a "Made in the U.S.A." or "Made in America" label, or the equivalent thereof, in order to represent that such product was in whole or substantial part of domestic origin, such label shall be consistent with decisions and orders of the Federal Trade Commission issued pursuant to section 45 of this title.

The statute applies to claims that a product "was in whole *or substantial part* of domestic origin."

"In whole" can reasonably be construed to refer to claims that the Commission refers to as "unqualified," and to which the "all or virtually all" U.S. content test applies.

"In . . . substantial part" must apply to products as to which a lesser claim of U.S. origin is made. Thus, the statute clearly grants authority to issue rules that govern some claims other than unqualified claims.

Under the rubric of "Qualified U.S. Origin Claims," the Policy Statement imposes requirements for *any* claim of U.S. origin where a product does not meet the "all or virtually all" test:

Where a product is not all or virtually all made in the United States, any claim of U.S. origin should be adequately qualified to avoid consumer deception about the presence or amount of foreign content. In order to be effective, any qualifications or disclosures should be sufficiently clear, prominent, and understandable to prevent deception.

There may be some qualified claims of U.S. origin that do not amount to a claim that a product was “in substantial part” of domestic origin.

However, for all other qualified claims, the statute provides the Commission with rulemaking authority. For the reasons stated herein, we urge the Commission to exercise that authority.

III. The FTC’s proposed MUSA rule is right to align itself with consumer perceptions as opposed to weaker rules relating to customs revenue.

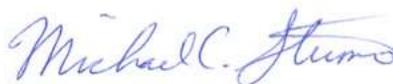
CPA supports the inclusion of retail beef in this Rule.

Currently, when companies import beef, they are still able to call the beef “Product of the USA” as long as it was processed here. This is as misleading in the grocery store as it is in the other non-food contexts the FTC regulates. The FTC’s has an opportunity to clarify to consumers where their beef comes from. We urge you to do so.

Thank you,

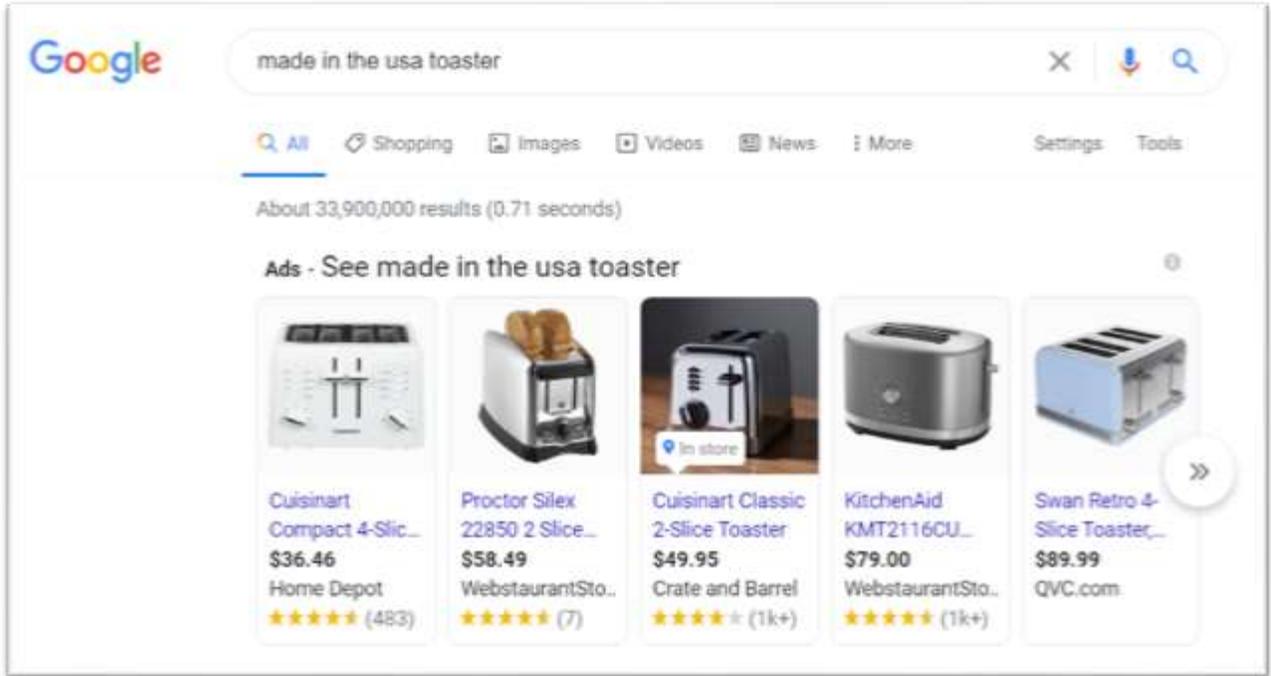


Daniel DiMicco, Chairman



Michael Stumo, CEO

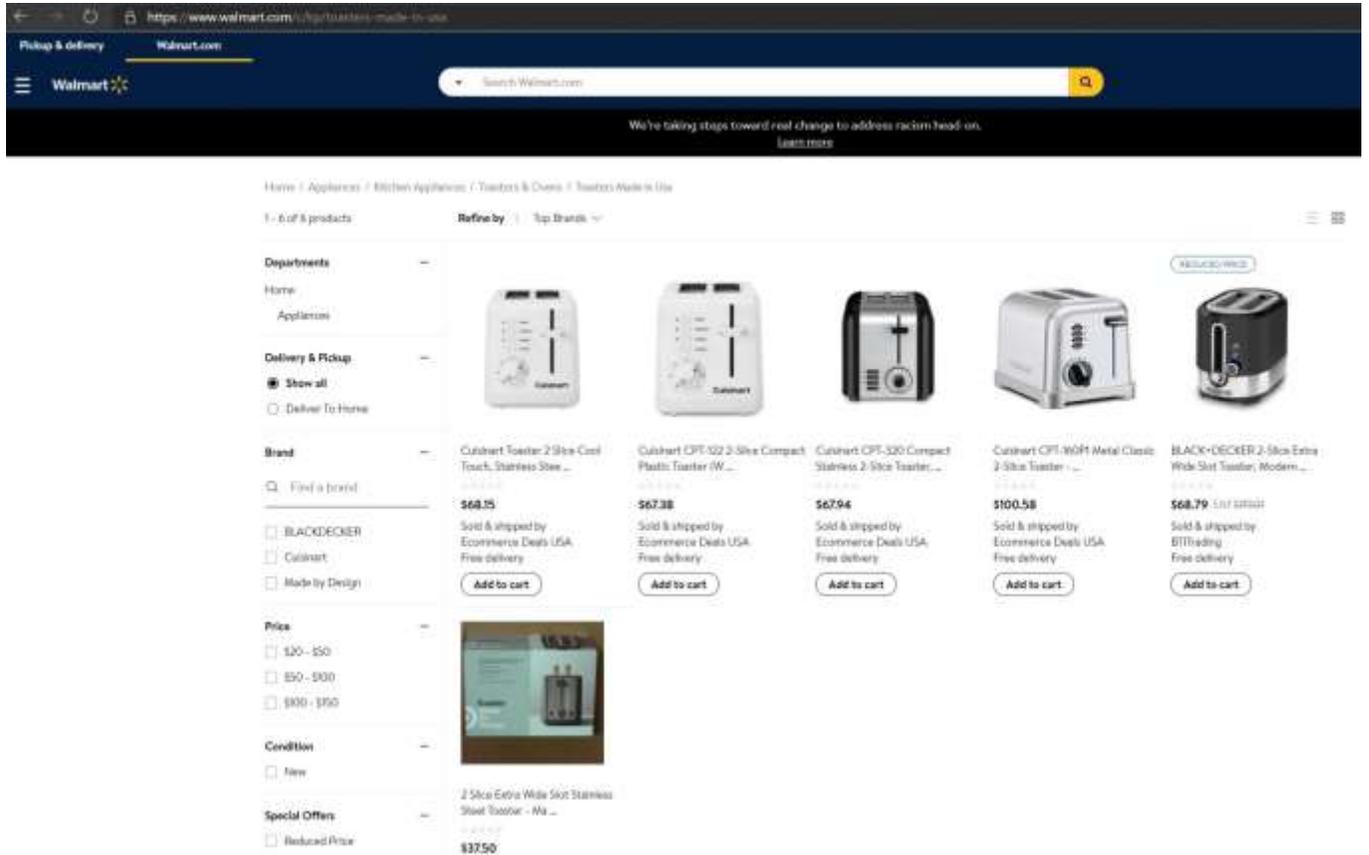
EXHIBIT 1



The Google search result for “made in the usa toaster” as of September 14, 2020.

The Google ads included major retailers like Home Depot, Crate and Barrel, and QVC. However all the products shown are imported, not made in the USA.

EXHIBIT 2



In this exhibit, the false advertising is not just in the Wal-Mart URL, but also in the product category section.

Above where it says “1 to 6 products”, the sub-category under “Toasters & Ovens” is “Toasters Made in USA”.

CPA can confirm that none of those toasters are made in the USA.

Thankfully it was subject to a complaint by a CPA member and Wal-Mart no longer posts this page.