

Made In America Claims For Foods

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Food and Beverage Alert
10.10.17

Putting "Made in America" on food labels is considered a marketing claim governed by the Federal Trade Commission (FTC) and not, as you might think, the Food and Drug Administration. The FTC has issued guidance on the dos and don'ts.

The FTC's position is that consumers are likely to understand unqualified United States origin claims to mean that the product is "all or virtually all" made in the United States (including the District of Columbia and all US territories and possessions). "All or virtually all" means that all significant parts and processing are of US origin. At a minimum, the final assembly or processing of the product must take place in the United States.

However, when a product comprised of foreign components is packaged or assembled in the US, the concept of "substantial transformation" may come into play. "Substantial transformation" occurs when a new article is made from those foreign components, and the new article has a new name, use and character. For example, coffee beans that are imported from Brazil but ground, flavored and packaged in the US may be able to include "Product of USA" on the food label.

There are also qualified claims. Where a product is not all or virtually all made in the United States, any claim of US origin should be qualified to avoid consumer deception. The exact form of the qualified claim is not set by the FTC, but the FTC does provide examples of acceptable claims. They may be general, indicating the existence of unspecified foreign content (e.g., 'Made in USA of US and imported parts') or they may be specific, indicating the amount of US content (e.g., '60% US content'), the parts or materials that are imported (e.g., 'Made in USA from imported leather'), or the particular foreign country from which the parts come ('Made in USA from French components') so long as accurate and verifiable. The FTC believes that consumers are likely to understand a qualified claim to mean that, whatever foreign materials or parts the product contains, the last assembly, processing, or finishing of the product occurred in the United States.

Certainly no claim, qualified or not, should be made unless it can be substantiated.

In deciding whether any claim, qualified or not qualified, is acceptable, the FTC will consider the overall commercial impression of the label or other material. Components such as the United States flag or map may imply a US claim, even if it not directly stated. Final warning: Watch out for California, which has its own, much more restrictive, statute.

This alert was made in America.

For further information on trademark issues, please contact Randy Friedberg (friedberg@whiteandwilliams.com; 212.714.3079) or another member of our Food and Beverage Group.

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