



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Bureau of Consumer Protection  
Division of Enforcement

Julia Solomon Ensor  
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June 29, 2022

**VIA EMAIL**

Craig A. Eaton, Esq.  
Eaton & Torrenzano, LLP  
1662 Sheepshead Bay Road  
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Dear Mr. Eaton:

We received your submissions on behalf of Grado Laboratories, Inc., d/b/a Grado Labs (“Grado” or the “Company”). During our review, we discussed concerns that marketing materials may have overstated the extent to which the Company’s headphones and audio products are made in the United States. Specifically, although Grado assembles many products in the United States, those products generally include more than a *de minimis* amount of imported content. Additionally, Grado sells some wholly imported items.

As discussed, unqualified U.S.-origin claims in marketing materials – including claims that products are “Made” or “Built” in the USA – likely suggest to consumers that the products advertised in those materials are “all or virtually all” made in the United States.<sup>1</sup> The Commission may analyze a number of different factors to determine whether a product is “all or virtually all” made in the United States, including the proportion of the product’s total manufacturing costs attributable to U.S. parts and processing, how far removed any foreign content is from the finished product, and the importance of the foreign content or processing to the overall function of the product. The “all or virtually all” standard is codified in the Made in USA Labeling Rule, 16 C.F.R. § 323 (the “MUSA Rule”).<sup>2</sup>

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<sup>1</sup> FTC, *Issuance of Enforcement Policy Statement on “Made in USA” and Other U.S. Origin Claims*, 62 Fed. Reg. 63756, 63768 (Dec. 2, 1997) (the “Policy Statement”). Additionally, beyond express “Made in USA” claims, “[d]epending on the context, U.S. symbols or geographic references, such as U.S. flags, outlines of U.S. maps, or references to U.S. locations of headquarters or factories, may, by themselves or in conjunction with other phrases or images, convey a claim of U.S. origin.” *Id.*

<sup>2</sup> Effective August 13, 2021, it is a violation of the MUSA Rule to label any covered product “Made in the United States,” as the MUSA Rule defines that term, unless the final assembly or processing of the product occurs in the United States, all significant processing that goes into the product occurs in the United States, and all or virtually all ingredients or components of the product are made and sourced in the United States. See <https://www.federalregister.gov/documents/2021/07/14/2021-14610/made-in-usa->

For a product that is substantially transformed in the United States, but not “all or virtually all” made in the United States, the Policy Statement explains, “any claim of U.S. origin should be adequately qualified to avoid consumer deception about the presence or amount of foreign content . . . . Clarity of language, prominence of type size and style, proximity to the claim being qualified, and an absence of contrary claims that could undercut the effectiveness of the qualification will maximize the likelihood that the qualifications and disclosures are appropriately clear and prominent.”<sup>3</sup>

The Commission has explained that, unless marketers specify which products are covered or directly link claims to particular products, consumers generally interpret U.S.-origin claims in marketing materials to cover all products advertised in those materials. Accordingly, the Policy Statement provides, “marketers should not represent, either expressly or by implication, that a whole product line is of U.S. origin (*e.g.*, ‘Our products are Made in USA’) when only some products in the product line are, in fact, made in the United States.”<sup>4</sup>

As discussed, it is appropriate for Grado to promote the fact it has employed workers and performed certain functions in Brooklyn, New York for many years. However, depending on the net impression conveyed, the Company may need to include prominent qualifications to avoid implying that the products advertised are “all or virtually all” made in the United States, unless that becomes the case. Moreover, to the extent Grado continues to offer wholly imported products, the Company should tailor any claims of U.S. assembly to the products to which they relate, and take care not to imply they cover all Company products.

To avoid deceiving consumers, Grado implemented a remedial action plan. This plan included: (1) removing unqualified “Made in USA” and “Hand-Built in Brooklyn” claims from all marketing materials; (2) introducing qualified claims clarifying that products incorporate imported parts; (3) sending labels to dealers to cover outdated claims on inventory on hand, and instructing dealers to update other marketing materials; (4) updating label artwork and social media posts; (5) updating social media platform materials; (6) training staff; and (7) requesting updates to product reviews where needed.

FTC staff members are available to work with companies to craft claims that serve the dual purposes of conveying non-deceptive information and highlighting work done in the United States. Based on Grado’s actions and other factors, the staff has decided not to pursue this investigation any further. This action should not be construed as a determination that there was no violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. The Commission reserves the right to take such further action as the public interest may require. If

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labeling-rule. Pursuant to 15 U.S.C. § 45(m)(1)(A), the Commission may seek civil penalties of up to \$46,517 per MUSA Rule violation.

<sup>3</sup> Policy Statement, 62 Fed. Reg. 63756, 63769.

<sup>4</sup> Policy Statement, 62 Fed. Reg. 63756, 63768 n.111.

you have any questions, please feel free to call.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. ENSOR".

Julia Solomon Ensor  
Staff Attorney

A handwritten signature in blue ink, appearing to read "Lashanda J. Freeman".

Lashanda Freeman  
Senior Investigator