



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

Bureau of Consumer Protection
Division of Enforcement

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November 4, 2022

VIA EMAIL

Mr. Randall Waldron
Vice President of Sales & Marketing
Liberty Pumps, Inc.
7000 Apple Tree Ave.
Bergen, NY 14416

Dear Mr. Waldron:

We received your submissions on behalf of Liberty Pumps, Inc. (“Liberty Pumps” or the “Company”). During our review, we discussed concerns that marketing materials may have overstated the extent to which the Company’s products, including, but not limited to, certain sump, sewage, and effluent pumps, are made in the United States. Specifically, although many Liberty Pumps products are assembled in the United States and meet the domestic manufacturing requirements of the Buy American Act (“BAA”), 41 U.S.C. §§ 8301-8305,¹ these products generally include more than a *de minimis* amount of imported content.²

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.³ The

¹ BAA establishes price preferences for domestic end products and construction materials in government acquisitions, and defines those terms as they are used in that limited context. *See* 48 CFR § 25.003 (stating that for purposes of BAA, “domestic end product[s]” and “domestic construction material[s]” include, among other things, certain manufactured products or materials where either the cost of the components mined, produced, or manufactured in the United States exceeds 50% of the cost of all components, or the product or material is a commercially available off-the-shelf item).

² Liberty Pumps also offers a small number of wholly imported products.

³ 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,

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 Labeling Rule”).⁴

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.”⁵

As discussed, it is appropriate for Liberty Pumps to promote the fact it employs workers and performs certain processes in the United States, provided marketing materials do not overstate the extent to which Liberty Pumps’ products are made in the United States. It is also appropriate for Liberty Pumps to make truthful claims that products meet BAA requirements, as long as those claims are either: (1) limited to marketing materials available only to government purchasers, or (2) qualified to avoid consumer deception.

To avoid deceiving consumers, Liberty Pumps implemented a remedial action plan. This plan included: (1) dedicating significant Company resources to create a cross-department task force to quickly review and update labels and claims;⁶ (2) introducing qualifications to clarify that products incorporate imported parts; (3) contacting all sales representatives and distributors to provide correct marketing materials and update distributor approval processes; and (4) providing updated training on U.S.-origin claims.

convey a claim of U.S. origin.” *Id.*

⁴ Effective August 13, 2021, it is a violation of the MUSA Labeling Rule to label any covered product “Made in the United States,” as the MUSA Labeling 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-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 Labeling Rule violation.

⁵ Policy Statement, 62 Fed. Reg. 63756, 63769.

⁶ This team has identified some residual unqualified claims visible through Google on sites in the process of being reindexed. Liberty Pumps has confirmed it will continue to monitor these sites. Additionally, the Company has confirmed that distributors continuing to make unauthorized claims are subject to a review process that can result in loss of authorization to distribute Liberty Pumps’ products.

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 Liberty Pumps' actions and other factors, the staff has decided not to pursue this investigation any further. This 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 or the MUSA Labeling Rule, 16 C.F.R. Part 323. The Commission reserves the right to take such further action as the public interest may require. If you have any questions, please feel free to call.

Sincerely,



Julia Solomon Ensor
Staff Attorney



Lashanda Freeman
Senior Investigator