



Office of Commissioner
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UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

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Question Presented

adequate to remedy serious violations of the FTC's "Made in

Summary

A Made-in-USA claim can serve as a key element of a product's brand that communicates quality, durability, authenticity, and safety, among other attributes. Not only can it be a signal about specific product attributes but it can also contribute to the development of a brand identity that connotes a set of values, such as fair labor practices, to consumers.

Made-in-

similarly to its competitors, Patriot Puck led consumers to believe they were getting a great deal on American-made hockey pucks, when in fact they were overpaying for pucks made in China.¹²

Nectar Sleep: Nectar Sleep is a direct-to-consumer online mattress firm founded by Silicon Valley entrepreneurs. According to a CNBC [profile](#) of the company, Nectar competes with more than 200 firms to capture a slice of the \$15 billion mattress market.

Nectar mattresses are made in China, which may be a negative attribute for consumers who have health or safety concerns about Chinese-made mattresses.¹³ Perhaps for this reason, the company falsely represented to consumers that its mattresses were assembled in the US.

Nectar's conduct had clear consequences. Competitors who actually made mattresses domestically were undercut, and consumers looking for US-made mattresses – possibly for health or safety reasons – got ripped off. Further, Nectar may continue to profit from the lingering misperception that its mattresses are made in the US.

Addressing Made-in-USA Fraud Going Forward

Most FTC resolutions of Made-in-USA violations have resulted in voluntary compliance measures¹⁴ or cease-and-desist orders. Indeed, none of the three settlements approved today includes monetary relief, notice to consumers, or any admission of wrongdoing.

Going forward, in cases involving egregious and undisputed Made-in-USA fraud, I believe there should be a strong presumption against simple cease-and-desist orders. Instead, the Commission should consider remedies tailored to the individual circumstances of the fraud, including redress and notice for consumers, disgorgement of ill-gotten gains, opt-in return programs, or admissions of wrongdoing.

Some general principles can inform our approach to tailoring remedies. For firms that built their core brand identity on a lie, full redress or the opportunity for opt-in refunds may be appropriate, given the centrality of the false claim and its widespread dissemination.¹⁵ When refunds are

¹² Surveys show that Americans will pay a premium for US-made sporting goods relative to those made in China, meaning they effectively discount goods made in China. *Made in America, Again* at 1. And *AmericansAndh16 Aai*

