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

Bureau of Consumer Protection
Division of Enforcement

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VIA EMAIL

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Dear Mr. Smith:

We received your submissions on behalf of ClaroLux, Inc. ("ClaroLux" or the "Company"). During our review, we discussed concerns that marketing materials may have overstated the extent to which ClaroLux's outdoor lighting products are made in the United States. Specifically, among other things, certain ClaroLux products incorporate significant imported materials including, but not limited to, LED components and other lighting parts.

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.[1] 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 Labeling Rule").[2]

[1] 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.*

[2] 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-

The Commission has explained that, unless marketers either 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."[3]

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."[4]

As discussed, it is appropriate for the Company to promote its general commitment to American jobs and highlight U.S. manufacturing processes. However, marketing materials should not state or imply that products are wholly or partially made in the United States unless the Company can substantiate those claims.

To avoid deceiving consumers, ClaroLux implemented a remedial action plan. This included: (1) removing unqualified U.S.-origin claims from marketing materials; (2) introducing qualified claims where appropriate; (3) informing dealers of changes to marketing materials and explaining that dealers failing to update materials were subject to account suspension or termination; (4) training employees on country-of-origin marketing policies and procedures; and (5) implementing a multi-person approval process for labeling and packaging.

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 the Company'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 you have any questions, please feel free to call.

Sincerely,

Julia Solomon Ensor, Staff Attorney

Lashanda Freeman, Senior Investigator

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 $50,120 per MUSA Labeling Rule violation.

[3] Policy Statement, 62 Fed. Reg. 63756, 63768 n.111.

[4] Policy Statement, 62 Fed. Reg. 63756, 63769.