



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

Bureau of Consumer Protection
Division of Enforcement

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FEDERAL EXPRESS

Jean-Cyril Walker, Esq.
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Dear Mr. Walker:

We received your submissions on behalf of your client, Henkel Corporation (“Henkel” or the “Company”). During our review, we discussed concerns that labels or marketing materials may have overstated the extent to which certain Henkel-Loctite cyanoacrylate glue products are made in the United States or contain U.S.-sourced ingredients. Specifically, although Henkel substantially transforms raw materials into cyanoacrylate glues in the United States, a significant proportion of the cost of the chemical inputs to these products is attributable to imported chemicals.

As we discussed, the FTC’s Enforcement Policy Statement on “Made in USA” and Other U.S. Origin Claims (“Enforcement Policy Statement”) explains that in order to make any “Made in USA” claim – qualified or unqualified – “it is a prerequisite that the product have been last ‘substantially transformed’ in the United States, as that term is used by the U.S. Customs Service.”¹ If a marketer can substantiate that its product was last “substantially transformed” in the United States, then the marketer should apply the analysis described in the Enforcement Policy Statement to determine whether it can make a non-deceptive unqualified “Made in USA” claim for its product.

Unqualified “Made in USA” claims likely suggest to consumers that the advertised products are “all or virtually all” made in the United States. The Commission may analyze a number of different factors to determine whether a product is “all or virtually all” made in the United States. For products that incorporate imported raw materials, the Commission considers “what percentage of the cost of the product the raw materials constitute and how far removed

¹ *Federal Trade Commission, Issuance of Enforcement Policy Statement on “Made in USA” and Other U.S. Origin Claims*, 62 Fed. Reg. 63756, 63768 (December 2, 1997).

from the finished product the raw materials are.”² As the Commission has noted, “even where a raw material is nonindigenous to the United States, if that imported material constitutes the whole or essence of the finished product . . . , it would likely mislead consumers to label the final product with an unqualified ‘Made in USA’ claim.”³

In this case, although the cyanoacrylate glue products in question were last substantially transformed in the United States, they include imported raw materials that are significant in cost and to the function of the adhesives. Accordingly, to avoid deceiving consumers, you explained that the Company is updating labels for affected glues to state “U.S. Made: US/Foreign Materials.” Because Henkel makes no U.S.-origin claims for these products other than on labels, you stated that no further corrective action is needed.

Based on your statements and Henkel’s ongoing corrective effort, the staff has decided not to recommend further action. This letter 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, you can reach me at (202) 326-2377.

Sincerely,



Julia Solomon Ensor
Staff Attorney

² *Id.* at 63766.

³ *Id.* at 63739 n.117.