



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

Bureau of Consumer Protection
Division of Enforcement

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December 11, 2018

VIA FEDEX

Kevin J. Miller, Esq.
Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C.
Sumner Square
Suite 400
1615 M Street, N.W.
Washington, D.C. 20036

Dear Mr. Miller:

We received your submissions on behalf of KONG Company, LLC (“KONG” or the “Company”). During our review, we discussed concerns that marketing materials may have overstated the extent to which KONG products, including rubber dog toys, are made in the United States. Specifically, although certain KONG treats are made in the United States, and the Company performs certain manufacturing processes for other products in the United States, KONG also sells wholly imported products and products that contain significant imported content, including imported rubber latex.

As discussed, unqualified U.S.-origin claims in marketing materials – including claims that products are “Made,” “Built,” or “Manufactured” in the USA – likely suggest to consumers that all 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.

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

The Commission has noted that “[w]here a product is not all or virtually all made in the United States, any claim of U.S. origin should be adequately qualified to avoid consumer deception about the presence or amount of foreign content. In order to be effective, any qualifications or disclosures should be sufficiently clear, prominent, and understandable to prevent deception.”²

To avoid deceiving consumers, KONG implemented a remedial action plan to update and qualify its representations. This plan included: (1) updating product packaging, product inserts, and trade show materials; (2) updating online material, including the Company website and social media pages; (3) working with direct-selling online retailers including Chewy, PetSmart, Petco, and Amazon to update claims; and (4) making diligent efforts to ensure the accuracy of third-party retailer claims, including by implementing a process to regularly check pages for origin claims and consistently notify the retailer of the issue until changes are made.³

As discussed, it is appropriate for the Company to promote the fact that it employs workers and performs certain processes in the United States, provided that marketing materials do not overstate the extent to which KONG’s products are made in the United States. Additionally, FTC staff is available to work with companies to craft qualified claims that serve the dual purposes of conveying non-deceptive information to consumers and highlighting work done in the United States.

Based on KONG’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, you can reach me at (202) 326-2377.

Sincerely,



Julia Solomon Ensor
Staff Attorney

² *Id.* at 63769.

³ You notified the staff that, despite these diligent efforts, certain unaffiliated third-party sellers continue to make unqualified claims for KONG products online. KONG has no direct sales relationship with these sellers – which might indirectly account for 1-2% of ultimate sales – and has been unable to secure their compliance.