



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

Bureau of Consumer Protection
Division of Enforcement

March 27, 2018

VIA FEDEX

Rick Biagi, Esq.
Neal & McDevitt, LLC
1776 Ash Street
Northfield, Illinois 60093

Dear Mr. Biagi:

We received your submissions on behalf of your client, Rainbow Play Systems, Inc. (“Rainbow” or the “Company”). During our review, we raised concerns that certain marketing materials may have overstated the extent to which the Company’s products, including, but not limited to, certain playsets, are made in the United States. Specifically, although Rainbow operates a plant and employs workers in Brookings, South Dakota, certain Rainbow playsets incorporate significant imported parts and equipment.

As discussed, unqualified “Made” or “Manufactured” in USA or America claims on marketing materials likely suggest to customers that all products advertised in those materials are “all or virtually all” made in the United States. Accordingly, Rainbow implemented a two-step remedial action plan to avoid deceiving consumers. First, Rainbow updated its own website, printed catalogue, and social media feeds. Second, because Rainbow playsets are sold through a distributor network, Rainbow undertook a comprehensive review and notification process to ensure the accuracy of distributor claims. This review included: (1) instructing all distributors to remove unqualified claims from marketing materials within fourteen days; (2) conducting a granular review of distributor materials to ensure compliance; (3) providing direct technical assistance to distributors that encountered difficulties updating online materials; (4) distributing a detailed memo outlining acceptable distributor claims; and (5) introducing a new distributor agreement that includes several provisions governing the use of false advertising claims and claims not approved for use by Rainbow.

As we discussed, to the extent Rainbow employs workers in the United States, it is appropriate for the Company to promote that fact, provided that marketing materials do not overstate the extent to which Rainbow playsets are made in the United States. Additionally, if, in the future, Rainbow can substantiate claims that particular playsets are “all or virtually all” made in the United States, it would be appropriate for the Company to update its marketing materials accordingly.

Based on your 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,



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