



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

Bureau of Consumer Protection
Division of Enforcement

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October 15, 2019

VIA EMAIL

Louis DiSanto, Esq.
Banner Witcoff
71 South Wacker Drive
Suite 3600
Chicago, IL 60606

Dear Mr. DiSanto:

We received your submissions on behalf of Coulter Ventures, LLC, d/b/a Rogue Fitness (“Rogue Fitness” or the “Company”). During our review, we discussed concerns that marketing materials may have overstated the extent to which the products Rogue Fitness sells are made in the United States, as products featured in Company materials actually include a mix of made in USA, assembled in USA, and imported products.

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.

To avoid deceiving consumers, Rogue Fitness implemented a remedial action plan to clarify its representations. The plan included: (1) removing broad U.S.-origin claims from the

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.*

Company website and social media profiles; (2) verifying the origin of individual products; (3) introducing qualified claims, where appropriate; (4) conducting training sessions; and (5) implementing U.S.-origin verification procedures for product development and marketing personnel.

As discussed, to the extent Rogue Fitness promotes its products to government purchasers, it is appropriate for the Company to make truthful claims that products meet the domestic manufacturing requirements of the Buy American Act (“BAA”), 41 U.S.C. §§ 8301-8305.² However, Rogue Fitness should either: (1) limit such claims to marketing materials available only to government purchasers, or (2) qualify claims to avoid consumer deception. As you know, 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 Rogue Fitness’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 BAA establishes price preferences for domestic end products and construction materials in government acquisitions, and defines those terms as they are used in that limited context. *See* 48 CFR § 25.003 (stating that for purposes of BAA, “domestic end product[s]” and “domestic construction material[s]” include, among other things, certain manufactured products or materials where either the cost of the components mined, produced, or manufactured in the United States exceeds 50% of the cost of all components, or the product or material is a commercially available off-the-shelf item).