

Client Alert

Made in USA Settlement for Chinese Imports

April 15, 2021

Promotional products seller Gennex Media LLC and its owner, Akil Kurji, have settled Federal Trade Commission (“FTC”) charges that they made false, misleading, or unsupported advertising claims that their “Brandnex” customizable promotional products were “all or virtually all” made in the United States. Despite numerous claims that the company’s novelty items were “Made in the USA,” “USA Made,” and “Manufactured Right Here in America!”, the items were wholly imported from China.

The settlement requires Gennex and Kurji to pay the FTC a monetary judgment of \$146,249.24. In addition to the payment, the parties are required to follow post-settlement remediation measures. Some of these measures include: (1) providing customer information to the FTC in order to ensure proper customer redress; (2) submitting compliance reports to the FTC one year post-settlement; and (3) maintaining certain business records for five years.

The settlement also prohibits Gennex and Kurji from making misrepresentations regarding U.S.-origin claims and making misleading and unsubstantiated country-of-origin representations. The terms provide guidance to retailers making representations about origin claims:

- **Unqualified** U.S.-origin claims for any product must show that the product’s final assembly or processing—and all significant processing—takes place in the United States, and that all or virtually all ingredients or components of the product are made and sourced in the United States.
- **Qualified** “Made in USA” claims must include a clear and conspicuous disclosure immediately adjacent to the representation that accurately conveys the extent to which the product contains foreign parts, ingredients or components, or processing.
- Products claiming to be **assembled** in the United States must ensure that these products are last substantially transformed in the United States, their principal assembly takes place in the United States, and U.S. assembly operations are substantial.

This action comes approximately a month after the FTC’s largest ever “Made in USA” judgment. The \$1.2 million settlement was against glue manufacturer Chemence after it violated a 2016 order involving deceptively labeled glue products whose inputs were imported. These examples show the FTC’s increased focus on enforcing against misleading “Made in USA” claims.

The FTC’s June 2020 notice of proposed rulemaking regarding unqualified “Made in USA” claims also shows that this area will continue to be even more of an enforcement priority in the future. The proposed Rule incorporates guidance set forth in the Commission’s previous Decisions and Orders and its 1997 Enforcement Policy Statement on U.S. Origin Claims.

The Rule will prohibit marketers from including unqualified “Made in USA” claims on labels unless: (1) final assembly or processing of the product occurs in the United States; (2) all significant processing that goes into the product occurs in the United States; and (3) all or virtually all ingredients or components of the product are made and sourced in the United States. Additional information on the FTC’s “Made in USA” guidelines can be found [here](#).

Senators have also pushed for “Made in USA” regulation changes. On February 8, 2021, Senator Mike Lee (R-Utah) and Angus King (I-Maine), introduced a [bill](#) to amend [Commerce and Trade Code § 45a](#). The amendment seeks to create a single national standard for “Made in the USA” claims. The bill is identical to [S.4065](#), which passed the Senate last year with bipartisan support but then lost momentum.

More information on the final consent order settling charges against Gennex Media LLC and Owner Akil Kurji can be found [here](#).

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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