June 26, 2017

VIA EMAIL AND REGULAR MAIL

Thomas B. Pahl, Acting Director, Bureau of Consumer Protection
Mary Engle, Associate Director, Division of Advertising Practices
Julia Ensor, Attorney, Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Ave. N.W.
Washington, DC 20580

Re: Target Corporation’s False and Deceptive Made in USA Representations

Dear Mr. Pahl, Ms. Engle, and Ms. Ensor:

As you know, the Federal Trade Commission recently investigated Target Corporation’s use of false and deceptive “Made in the USA” product labeling. In response to the FTC’s investigation, Target made numerous assurances to the agency that it had implemented a system for identifying, correcting, and prohibiting false U.S.-origin claims, which prompted the FTC to close its investigation in March of this year. Unfortunately, Target’s plan, as articulated in the FTC’s March 1st closing letter,1 completely ignored its website, which receives more than one billion page views each month and has driven a consistent increase in Target product sales in the last several years.2 This omission has left room for the retail giant to continue its false and deceptive USA labeling online.

Truth in Advertising, Inc. (TINA.org) investigated Target’s website – www.target.com – and found that false and deceptive Made in the USA labeling issues are widespread on its site. Specifically, TINA.org catalogued a sampling of 100 examples in which the Target website displays product specifications that falsely state “Made in the USA” for products made wholly or partially in other countries.
For example, Target brand up & up™ Floor Sweepers Dry Cloths, which are made in China according to the product packaging, are identified as “Made in the USA” on the Target website.

Target.com

Product Packaging

The sampling of 100 examples of this false and deceptive origin identification, which includes several Target-brand products in addition to numerous other brands, is available in TINA.org’s database. The sampling contains products made in whole or in part in more than a dozen countries, including China, Malaysia, Korea, Mexico, Germany, India, Brazil, Vietnam, Indonesia, Ghana, Turkey, Spain, Peru, Chile, Ireland, and Canada.

As the second largest retailer in the United States, whose website receives more than 60 million unique monthly visitors, such false and misleading statements have the potential of deceiving millions of consumers each day, the majority of whom prefer and specifically seek out products made in the U.S. In fact, surveys in recent years show that 78% of Americans would rather buy American-made products than ones made abroad, and more than 80% are willing to pay more for “Made in the USA” products than their foreign counterparts. Thus, it is critically important to make certain that all U.S.-origin claims made about products sold on Target.com are truthful.
In short, Target’s website contains false and deceptive made in the USA information that deceives consumers and violates the FTC Act. For these reasons, TINA.org urges the Federal Trade Commission to re-open its investigation into Target’s Made in the USA statements and take appropriate enforcement action.

Sincerely,

Laura Smith, Esq.  
Legal Director  
Truth in Advertising, Inc.

Bonnie Patten, Esq.  
Executive Director  
Truth in Advertising, Inc.

Cc: Jason K. Walbourn, Senior Director, Assistant General Counsel, Target Corp.  
    Don H. Liu, Chief Legal Officer, General Counsel, Target Corp.


6 We note that Target.com’s product pages include a “general disclaimer,” on which Target may rely in response to TINA.org’s troublesome findings:

However, as a matter of law, such a disclosure cannot be used as cover for a false and deceptive U.S.-origin claim. That is to say, Target is not permitted to make a false claim on its website and then post a disclosure effectively saying “this may or may not be true.” As the FTC has explained, “[a] disclosure can only qualify or limit a claim to avoid a misleading impression. It cannot cure a false claim. If a disclosure provides information that contradicts a material claim, the disclosure will not be sufficient to prevent the ad from being deceptive. In that situation, the claim itself must be modified.” See FTC .com Disclosures: How to Make Effective Disclosures in Digital Advertising, https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf. As the FTC has repeatedly noted, “what the headline giveth, the fine print cannot taketh away.” See What the headline

We also are aware that Target.com is a voluminous website and that a complete review of the site to ensure that there are no false or deceptive Made in the USA claims present is a large undertaking. However, given that Target has been made aware of its Made in the USA labeling issues for at least several months, and given that the company is investing more than $7 billion to advance its digital capabilities, it is undertaking that Target certainly can and must take. See Target 2016 Annual Report, https://corporate.target.com/annual-reports/2016.