



ARE YOUR LABELS LEGAL?

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Looking at the rules,
regulations and
penalties involved
in label laws

"A label or advertisement is considered deceptive if it contains a material misrepresentation or omission that is likely to mislead reasonable consumers."

Big Brother is watching you—and your labels. The Federal Trade Commission's (FTC) mission is to prevent deception and unfairness in the marketplace. This includes ensuring that advertisements and product packaging are not deceptive or misleading.

FTC regulations are something that distributors should not only be familiar with when buying products, but also when it comes time to resell or repackage the same goods for end-buyer consumption and use. A label or advertisement is considered deceptive if it contains a material misrepresentation or omission that is likely to mislead reasonable consumers. Product labels fall under these categories and are subject to the FTC's jurisdiction.

Although the FTC has issued numerous guidelines concerning labels, two of the hot spots are made-in-the-USA and environmental claims. The FTC guidelines on these issues are extensive, however, the following are some key points to keep in mind if concerned about truth-in-labeling laws:

1. "MADE IN THE USA" CLAIMS

For a product to be identified as "Made in the USA," the entire product or virtually all of the product must in fact be made in the USA. "All or virtually all" means that all significant parts and processes are of U.S. origin. The product must contain no foreign content. However, the made-in-the-USA claim may be made if the product contains a negligible amount of foreign material.

Made-in-the-USA claims can be unqualified or qualified. Merely stating "Made in the USA" is an unqualified claim. A qualified claim sets forth the specific extent, amount or type of U.S. content or processing in the product. For example, if a product does not consist of all or virtually all U.S. content and/or processes, the following types of claims may be made:

- Made in the USA of Imported and U.S. parts
- 60 percent U.S. content
- Assembled in the USA from Mexican Parts

Keep in mind that the "assembled in the U.S." claim may not be made unless the principal and substantial assembly actually occurred in the United States.

2. ENVIRONMENTAL CLAIMS

The FTC has issued a host of guidelines with respect to specific environmental claims. Although the FTC has numerous guidelines for specific environmental claims, two such areas will be discussed here. They are "biodegradable" and "recyclable" claims.

To make an unqualified claim that a product is biodegradable, there must be substantiation by competent and reliable scientific evidence that the product or package will biodegrade within a short period of time. If only the product or the package is biodegradable, or if only certain components of the product are biodegradable, the claim should be qualified and the specific biodegradable portions should be identified.

A claim that a product or package is recyclable can only be made if the product or package can be "collected, separated or otherwise recovered from the solid waste stream for reuse, or in the manufacture or assembly of another package or product, through an established recycling program." Qualifiers are needed if the product or package contains more than minor or incidental materials that are not recyclable.

3. CONSEQUENCES FOR VIOLATION

If the FTC believes, or has reason to believe, that a label is misleading or violates the FTC's guidelines, the FTC may bring an enforcement action against violators. The FTC may seek and recover civil penalties for such violations. In fact, you may recall that last year, U.S. toolmaker Stanley Works, agreed to pay a civil penalty of \$205,000 to settle charges brought by the FTC concerning its "Made in the USA" claim. In that case, the FTC alleged that Stanley Works falsely claimed that some of its products were made in the USA when the products actually contained a substantial amount of foreign content.

In addition, where labels are misleading, consumers or competitors may assert various claims directly against violators for, among other things, false advertising.

To avoid FTC enforcement or legal actions from competitors or consumers, it is best to make sure your labels are compliant with FTC guidelines. When in doubt, it is always best to consult competent legal counsel.