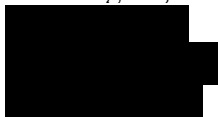




June 26, 2017

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.

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,

A handwritten signature in blue ink that reads "L. Smith".

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

A handwritten signature in blue ink that reads "B. Patten".

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.

¹ FTC’s March 1, 2017 closing letter to Target Corporation, https://www.ftc.gov/system/files/documents/closing_letters/nid/musa_target_corp_closing_letter.pdf.

² Target.com gets more than 283 million views per month on desktops and more than 735 million views per month on mobile devices. <https://targetmedianetwork.target.com/meetOurGuests#target-stats>.

Target’s digital sales are also on the rise. In 2016, digital sales accounted for over 4% of total sales, up from 3.4% in 2015, 2.6% in 2014, and 2% in 2013. See <http://www.businessinsider.com/target-stores-key-to-digital-growth-2017-3> and <https://www.benzinga.com/news/earnings/17/03/9126425/what-happened-to-targets-e-commerce-business>.

³ <https://www.truthinadvertising.org/target-made-usa-error-data/>.

⁴ <https://targetmedianetwork.target.com/meetOurGuests#target-stats>.

⁵ Nov. 15, 2012 Press Release, “U.S. and Chinese Consumers Willing to Pay More for Made in USA Products,” <https://www.truthinadvertising.org/wp-content/uploads/2015/07/BCG-Press-Release-U...or-Made-in-USA-Products.pdf>; Knowing Which Products are Truly Made in America: How to know which flag-waving products are true red, white, and blue, Consumer Reports, February 2013, <http://www.consumerreports.org/cro/magazine/2013/02/made-in-america/index.htm>.

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:

general disclaimer: Content on this site is for reference purposes only. Target does not represent or warrant that the nutrition, ingredient, allergen and other product information on our Web or Mobile sites are accurate or complete, since this information comes from the product manufacturers. On occasion, manufacturers may improve or change their product formulas and update their labels. We recommend that you do not rely solely on the information presented on our Web or Mobile sites and that you review the product’s label or contact the manufacturer directly if you have specific product concerns or questions. If you have specific healthcare concerns or questions about the products displayed, please contact your licensed healthcare professional for advice or answers.

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

giveth, by Lesley Fair, <https://www.ftc.gov/news-events/blogs/business-blog/2011/06/what-headline-giveth>.

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>.