



November 1, 2023

VIA EMAIL

Mark W. Redman
Associate General Counsel
BMW of North America, LLC
Mark.Redman@bmwna.com

Re: BMW's Deceptive Made in USA Marketing

Dear Mr. Redman:

Thank you for your October 20 letter concerning TINA.org's October 17 letter to the Federal Trade Commission regarding BMW's Made in USA ("MUSA") marketing.

I was encouraged by your statement that "BMW NA has taken down the BMW NA national television and YouTube commercials highlighted in [TINA.org's] letters and on [TINA.org's] website and will modify uses of the terms 'built' and 'manufactured' to versions of 'assemble.'" However, as of today, all but two examples in TINA.org's sampling of deceptive BMW marketing materials remain published (and unedited).¹ Further, given that some percentage of BMW X range vehicles hail from other countries, replacing the words "built" and "manufactured" with the word "assembled" or similar language will not wholly eliminate the deception at issue.

With respect to BMW X models that are assembled in the U.S., the position that consumers reasonably believe the terms "built" or "manufactured" mean something different from made in the U.S. does not appear to be supported by any consumer perception data. Moreover, the FTC has repeatedly stated – in litigated matters, administrative actions, closing letters and rulemakings, among other places – its longstanding position that consumers view the terms "built" and "manufactured" as

¹ TINA.org's 2023 BMW X Range Made in USA Marketing Database, <https://truthinadvertising.org/evidence/2023-bmw-x-range-made-in-usa-database/>. See, e.g., Point X: Made in America The BMW X Range Family | BMW USA, YouTube, Apr. 4, 2023, <https://www.youtube.com/watch?v=orqLanKamfl> (still published as of Nov. 1, 2023); German Engineered, American Built: The BMW X Range | BMW USA, YouTube, June 3, 2022, <https://www.youtube.com/watch?v=PpjoSey9LAE> (still published as of Nov. 1, 2023). The only deceptive U.S.-origin claims in TINA.org's database that have been removed as of today are <https://www.bmwofschererville.com/about-us/made-in-america/> and <https://www.bmwofgwinnettplace.com/manufacture-information/is-bmw-a-foreign-car/>.

synonymous with “made” in the U.S.² And on that point, while we understand that statements made by independent BMW dealerships are not made by BMW NA, it is indeed quite possible that dealers have taken their marketing lead from BMW NA’s MUSA marketing and are using “made” because they believe it to be synonymous with “built” and “manufactured.”

If you have any further concerns or questions, please do not hesitate to let us know.

Sincerely,



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

² See, e.g., *United States v. iSpring Water Systems, LLC, et al.*, Stipulated Order for Civil Penalties, Permanent Injunction, and Other Relief, Apr. 19, 2019, https://www.ftc.gov/system/files/documents/cases/172_3033_ispring_water_systems_-_stipulated_order.pdf (“Made in the United States’ means any representation, express or implied, that a product or service, or a specified component thereof, is of U.S.-origin, including, but not limited to, a representation that such product or service is ‘made,’ ‘manufactured,’ ‘built,’ ‘produced,’ or ‘crafted’ in the United States or in America, or any other U.S.-origin claim.”); *In the Matter of Chaucer Accessories, Inc., et al.*, FTC File No. 2223163, Agreement Containing Consent Order, https://www.ftc.gov/system/files/ftc_gov/pdf/2023-03-09-Bates-Order.pdf (“Made in the United States’ means any representation, express or implied, that a product or service, or a specified component thereof, is of U.S.-origin, including, but not limited to, a representation that such product or service is ‘made,’ ‘manufactured,’ ‘built,’ ‘produced,’ or ‘crafted’ in the United States or in America, or any other U.S.-origin claim.”); June 16, 2020 FTC Closing Letter to Merrill Manufacturing Co., https://www.ftc.gov/system/files/documents/closing_letters/nid/p074204_-_merrill_closing_letter.pdf (“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.”); May 9, 2018 FTC Closing Letter to Superwinch, LLC, https://www.ftc.gov/system/files/documents/closing_letters/nid/superwinch_llc_closing_letter.pdf (same); Made in USA Labeling Rule, 16 CFR Part 323 (“The term Made in the United States means any unqualified representation, express or implied, that a product or service, or a specified component thereof, is of U.S. origin, including, but not limited to, a representation that such product or service is ‘made,’ ‘manufactured,’ ‘built,’ ‘produced,’ ‘created,’ or ‘crafted’ in the United States or in America, or any other unqualified U.S.-origin claim.”); Complying with the Made in USA Standard, FTC, <https://www.ftc.gov/system/files/documents/plain-language/bus03-complying-made-usa-standard.pdf> (“Manufacturers and marketers should be cautious about using general terms, such as “produced,” “created” or “manufactured” in the U.S. Words like these are unlikely to convey a message limited to a particular process. Additional qualification probably is necessary to describe a product that is not “all or virtually all” made in the U.S.”).