



May 19, 2015

VIA EMAIL AND REGULAR MAIL

Jessica Rich, Director
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Ave. N.W.
Washington, D.C. 20580
[REDACTED]

Re: Almay's Deceptive Simply American™ Campaign

Dear Ms. Rich:

Almay is currently running a national marketing campaign entitled Almay Simply American™ that makes the implied, unqualified claim that Almay products are made in the United States of America. The problem is that the vast majority of Almay products as represented on its website are not entirely made in the United States.¹ Most of its products contain non-U.S. components while others are wholly made in foreign countries. In fact, only a small minority of Almay products are actually wholly made in the United States. As a result, Almay is misleading consumers with its Simply American campaign.²

Almay's campaign features a 30-second commercial starring country singer and American Idol winner, Carrie Underwood. The commercial, clearly designed to send the message that Almay products are made in the USA, contains five different representations of the

¹ See Exhibit 1. All of the exhibits are available at <https://www.truthinadvertising.org/almay-exhibits/> and are also saved on the enclosed flash drive.

² On May 8, 2015, Truth in Advertising, Inc. (TINA.org) contacted Revlon, Almay's parent company, notifying it of TINA.org's investigation and findings, and asking that the company remedy the deceptive marketing. TINA.org gave Revlon a week to make corrections before forwarding this issue to your attention. The company responded to TINA.org on May 15, 2015 disagreeing with TINA.org's findings and refusing to make any noticeable changes to its campaign. Revlon asked TINA.org to "discontinue any further inquiry into Almay's advertising." See Ltr from A. Gerber to L. Smith, dated May 15, 2015 (Exhibit 2).

American flag³ and has Underwood singing “All-American Girl” in the background while her voice-over states:

Almay celebrates the true spirit of American beauty, which rises from the heart of our great country. Dreams are born. Hopes fly high. We love this country with a passion. You can see the pride in our eyes, read the joy on our faces, hear the love on our lips. We create products that deliver an effortless beauty look, genuine and glowing with confidence. Almay Simply American.

The commercial also shows seven different Almay products, none of which meet the legal standard for made in the U.S.A. – four of the products contain non-U.S. components, while one is made in China, one is made in the Czech Republic, and another is made in Germany.⁴ Absent from this commercial is any disclaimer to inform consumers that Almay is NOT simply American.⁵

In addition, the company’s website – www.almay.com – looks like a 4th of July spectacular. It features the slogan “Almay Simply American™” at the top of every page and prominently displays patriotic images, video clips, and text regarding the company’s recent partnership with the USO.⁶ One of the links provided in the slider at the top of the home page leads to a 48-second video entitled “Almay Proudly Supports the Women of the US Military.”⁷ The video is chock full of patriotism, American flags, and other red, white, and blue symbolism.⁸

³ See Exhibit 3.

⁴ See Exhibit 4. Note that the majority of Almay’s cosmetics come in several different shades. As part of its investigation, TINA.org reviewed at least one shade for each and every one of Almay’s products listed for sale at www.almay.com under the “Products” tab.

⁵ The commercial (Exhibit 5) is being aired on national television, as well as on the Internet, where it has over five million views. See <https://www.youtube.com/watch?v=PXf5iFAKuPs>. Almay also has two shorter commercials, both featuring Carrie Underwood: One is for Almay Smart Shade Butter Kiss Lipstick (Exhibit 6) and the other is for Smart Shade Makeup (Exhibit 7). Upon information and belief, the Carrie Underwood commercials have aired or are currently being aired on national television stations, including, but not limited to, ABC, NBC, E!, and MTV. The company has also created a “Behind the Scenes of Simply American” video (Exhibit 8) that shows Carrie Underwood in the process of shooting the main commercial described above. Like the commercial, the video is replete with American flags and red, white, and blue imagery. See Exhibit 9. Almay has posted all four commercials – the three made for television, as well as the Behind the Scenes video – at <http://www.almay.com/makeup-videos.aspx>.

⁶ See <http://www.almay.com> and Exhibit 10. The Almay website also has an entire page devoted to the company’s support of the USO, as well as a page inviting consumers to support the USO by sharing a photo of “Your Simply American Moment.” See <http://www.almay.com/simply-american/uso-partnership.aspx> (Exhibit 11) and <https://simplyamerican.almay.com/> (Exhibit 12).

⁷ This video (Exhibit 13) pops-up on the Almay home page upon clicking on the link in the slider, but is also available at <https://www.youtube.com/watch?v=5Hmqlq836MY>.

Any remaining skepticism a consumer could possibly have about the origin of Almay products is surely eliminated after reading the company's web page entitled "why almay," which has an image of the American flag at the top with the slogan "Almay Simply AmericanTM" superimposed on top.⁹ Beneath the image, the following text appears:

SIMPLY AMERICAN

almay celebrates the true spirit of american beauty. the all-american beauty look is genuine, fresh and glowing with confidence. we make getting this natural beauty look easy and safe. we are very proud of our american heritage and to be a truly american brand.

AMERICAN SCIENCE

innovating beauty since 1931, almay is a leader in developing award-winning cosmetics that not only enhance a woman's natural beauty but also are good for her skin. powered by american ingenuity and science, almay is a brand of firsts:

...

almay products are all formulated in our labs in edison, new jersey- best known as the center of american invention (the home of thomas edison).¹⁰

Despite all this Made in the USA messaging, nowhere on the entire Almay website is there a disclaimer that informs consumers that most Almay products contain non-U.S. components and some are wholly made in foreign countries. Exacerbating this problem is the fact that Almay does not provide any information whatsoever on its website as to where any of its specific products are made. In fact, the only way for a consumer to discover where Almay products are made is by reading the teeny tiny print found on product packaging, which on some products is so small as to be illegible.¹¹

⁸ See Exhibit 14.

⁹ See <http://www.almay.com/why-almay.aspx> and Exhibit 15.

¹⁰ See *id.* (emphasis added).

¹¹ See Almay's Facebook page (Exhibit 16) on which the company states that determining where its products are made can only be found "across all our packaging," and Revlon's response to TINA.org (Exhibit 2), which states that the origin of the products is "quite evident from the labels themselves – Almay's products are clearly and correctly labeled as to their site of manufacture, and when they contain non-domestic content." See also enclosed sampling of Almay products, as well as photographs of products in their packaging (Exhibit 17), which clearly demonstrate the difficulty in reading the made-in disclosures in the fine print. In addition, with respect to the products that are "Made in U.S.A. with U.S. and Non-U.S. components," the company does not provide any information regarding the percentage of foreign components. Thus, it is possible that the vast majority of Almay products are more foreign than not but consumers have no way of knowing.

In addition to its website, Almay has promoted the Almay Simply American™ campaign on Facebook, Twitter, YouTube, in online advertisements, and at stores that carry Almay products. In each of these settings there is a picture of Underwood and at least one representation of a U.S. flag with the words “Almay Simply American” prominently displayed.¹² Again, nowhere on social media or in store displays is there a disclaimer that most Almay products do not meet the legal definition for a made in the U.S.A. claim.

The company has also embarked on an Almay Simply American™ bus tour, which began on May 15, 2015 in New York City and is continuing to ten other U.S. cities through October 2015.¹³ The Almay Simply American™ bus is adorned with an image of the American flag, the USO logo, and the phrase “Pure Beauty. Hypoallergenic. American Science.”¹⁴ The panoply that accompanies the bus is fit for an Independence Day parade with everything entirely red, white, and blue, including, among other things, American flags, balloons, and images of Carrie Underwood, while U.S.-themed music is piped into the street. When Almay representatives were asked where Almay products are made, responses ranged from they are Made in the U.S., they are all assembled in the U.S. with U.S. and non-U.S. components, to they are made in North Carolina.

Taken as a whole, Almay’s Simply American campaign creates the overall impression that its cosmetics are made in the USA.¹⁵ The Almay Simply American™ slogan taken together with representations that Almay “celebrates the true spirit of American beauty,” is “a truly American brand,” “proud of our American heritage,” “powered by American ingenuity and science,” and “all formulated in our labs in Edison, New Jersey...the center of American invention,” as well as the USO partnership and the plethora of patriotic symbolism and narratives prominently scattered across all of Almay’s marketing, conveys the message that the entire Almay product line is made in the USA, which is simply not true.¹⁶

¹² See Exhibits 18, 19, 20, and 21. Almay also has Pinterest and Instagram accounts. Though neither of those pages currently features an American flag, Almay’s Instagram page features an image of the iconic Statue of Liberty with one of its eye shadow products held up next to it, which, ironically, happens to be made in Canada. See Exhibit 18.

¹³ See <https://simplyamerican.almay.com/> and Exhibit 12.

¹⁴ See photographs taken by TINA.org at the New York City bus tour event on May 15, 2015 (Exhibit 22).

¹⁵ This made in the U.S.A. messaging to consumers is supported by questions from consumers on Almay’s Facebook page. See Exhibit 15. In addition, use of the adverb “simply” in the trademarked tagline only strengthens Almay’s made in the USA claim because “simply” in this context means “without ambiguity,” and possible synonyms for the adverb range from “clearly,” “purely,” “just,” “solely” to “only” as in Almay is solely American or only American.

¹⁶ See Federal Trade Commission: Complying with the Made in USA Standard, <https://www.ftc.gov/tips-advice/business-center/guidance/complying-made-usa-standard>; Enforcement Policy Statement on U.S. Origin Claims, <http://www.ftc.gov/public-statements/1997/12/enforcement-policy-statement-us-origin-claims>;

In short, it is clear that Almay's Simply American™ campaign, including the Carrie Underwood commercials, is deceptive. Accordingly, TINA.org urges the FTC to take action to compel the company to cease such deceptive marketing.¹⁷

Sincerely,



Laura Smith, Esq.
Legal Director
Truth in Advertising, Inc.
[Redacted]



Bonnie Patten, Esq.
Executive Director
Truth in Advertising, Inc.
[Redacted]

Cc: Alexandra Gerber, Vice President and Assistant General Counsel, Revlon, Inc.

15 U.S.C. §45(a); *FTC v. The Black & Decker Corp.*, Docket No. C-4000, Complaint, available at <https://www.ftc.gov/sites/default/files/documents/cases/2001/02/blackanddeckercmp.pdf>, and Decision and Order, dated Feb. 8, 2001, available at <https://www.ftc.gov/enforcement/cases-proceedings/002-3194/black-decker-corporation-kwikset-corporation> (the FTC determined that advertising products as Made in the USA when a significant portion of the components of certain of its products was of foreign origin was deceptive and in violation of the FTC Act; the single statement in small print on product packaging “Assembled in Mexico” was not enough to correct the deception.); *FTC v. The Stanley Works*, Docket No. C-3876, Complaint, available at <https://www.ftc.gov/sites/default/files/documents/cases/1999/06/stanleyworkscmp.htm>, and Decision and Order, dated June 2, 1999, available at https://www.ftc.gov/sites/default/files/documents/cases/1999/06/stanleyworks.do_.htm (the FTC determined that advertising products as Made in the USA when a significant portion of the components of certain of its products were of foreign origin was deceptive and in violation of the FTC Act; the single statement “Tools made in the U.S.A. Case made in Taiwan.” on some labeling was not enough to correct the deception). See also *FTC v. E.K. Ekcessories, Inc.*, Docket No. C-4419, Complaint, dated Dec. 4, 2013, available at <https://www.ftc.gov/sites/default/files/documents/cases/131211ekcessoriescmpt.pdf>.

¹⁷ TINA.org has also sent a complaint letter to New York Attorney General Eric Schneiderman in the hopes that his office will also work to stop Almay from continuing with its deceptive marketing.