



November 12, 2015

**VIA EMAIL**

Julia Ensor, Attorney, Division of Enforcement  
Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Ave. N.W.  
Washington, DC 20580  
[REDACTED]

Re: Walmart.com's Inadequate Made in the USA Disclosure

Dear Ms. Ensor:

Based on Walmart's representations that it had removed *all* false and deceptive Made in the USA claims from its website, on October 20<sup>th</sup> the FTC closed its investigation of the company. Unfortunately, Walmart misled the agency. At the time Walmart gave its assurances to the FTC that it had removed "Made in USA" logos from all product listings; removed country-of-origin information from all product specifications (except where required by law); and removed U.S.-origin claims that appeared in product descriptions or titles, it simply was not conveying the truth. The fact of the matter is that on October 20 to the present day, Walmart's website contains false and deceptive Made in the USA claims.

In an apparent effort to remediate the problem, Walmart has added the following "disclaimer" to product pages:

**Important Made in USA Origin Disclaimer:** For certain items sold by Walmart on Walmart.com, the displayed country of origin information may not be accurate or consistent with manufacturer information. For updated, accurate country of origin data, it is recommended that you rely on product packaging or manufacturer information.

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, Walmart is not permitted to make a false claim and then post a disclosure saying, "sorry, Walmart may or may not be stating the truth." 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 .com Disclosures: How to Make Effective Disclosures in Digital Advertising,*

<https://www.ftc.gov/system/files/documents/plain-language/bus41-dot-com-disclosures-information-about-online-advertising.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>.

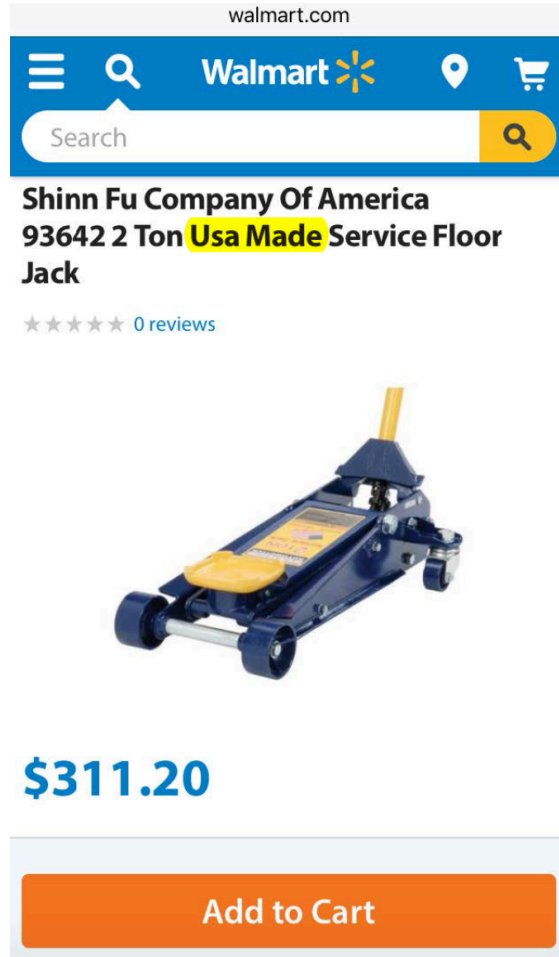
Moreover, not only is the disclaimer legally ineffective, but its placement is such that the vast majority of consumers will never see it. As confirmation of this point, the disclaimer is so far away from many of the deceptive representations that consumers can easily purchase products from Walmart.com without ever seeing the disclosure because the product title (which, in many cases, contains a U.S.-origin claim), product image, and “Add to Cart” button are all viewable together without scrolling down the page where the disclosure is located.

Computer screen view:

The screenshot shows a Walmart product page for a "Shinn Fu Company Of America 93642 2 Ton Usa Made Service Floor Jack". The product title is highlighted in yellow. The price is \$311.20 with \$41.80 shipping. The product image shows a blue and yellow floor jack. The page includes a search bar, navigation menu, and social media icons. The product details section includes a quantity selector, "Add to Cart" button, "Add to Registry" button, and "Add to List" button. The product is sold by Beach Audio Inc. and has a return policy. Shipping options are shown as "FREE pickup" (not available) and "Shipping" (see delivery options). The product features are listed as: low 3.75" pick-up height, High height of 20", removable one-piece handle, and u-joint release mechanism for precise load control.

[Note this product is actually “Assembled in the US with US and Global components.”  
<http://www.shinnfuamerica.com/ProductDetails/Hein-Werner/2TonServiceJack/HW93642/522>]

Mobile device view:



As the Commission has stated, disclosures must be prominent, conspicuous, and “effectively communicated to consumers before they make a purchase or incur a financial obligation.” See .com Disclosures: How to Make Effective Disclosures in Digital Advertising.

In reviewing their ads, advertisers should adopt the perspective of a reasonable consumer. They also should assume that consumers don’t read an entire website or online screen, just as they don’t read every word on a printed page. Disclosures should be placed as close as possible to the claim they qualify. Advertisers should keep in mind that having to scroll increases the risk that consumers will miss a disclosure. . . . Simply making the disclosure available somewhere in the ad, where some consumers might find it, does not meet the clear and conspicuous standard.

*Id.* There can be no dispute that Walmart.com’s U.S.-origin disclaimer is not prominent or conspicuous, as is required by law.

In short, Walmart lied to the FTC, continues to deceive consumers, and is trying to cover its tracks with a disclaimer that is legally and practically ineffective. As such, we strongly urge that action be taken immediately in order to protect consumers from Walmart's ongoing false and deceptive Made in the USA claims.

Sincerely,



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



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

Cc: Jessica Rich, Director, Bureau of Consumer Production, FTC