



June 28, 2016

**VIA OVERNIGHT MAIL AND EMAIL**

Julia Ensor, Attorney, Division of Enforcement  
Federal Trade Commission  
600 Pennsylvania Ave. N.W.  
Washington, D.C. 20580  
[REDACTED]

Re: Walmart's Continuing Use of False and Deceptive Made in USA Representations

Dear Ms. Ensor:

As you may recall, over a year ago, TINA.org notified Walmart that its website was replete with false and deceptive "Made in the USA" representations (as evidenced by 200 examples TINA.org compiled in June-July 2015).<sup>1</sup> At that time, Walmart admitted there were errors on its site, vowed to correct them immediately, and assured the Federal Trade Commission that it had fully addressed the deceptive U.S.-origin representations.<sup>2</sup> In fact, Walmart went so far as to promise the FTC that it had removed country-of-origin information from *all* product listings on its website and had implemented a procedure to flag and remove new U.S.-origin claims submitted by suppliers.<sup>3</sup> Based on these assurances, the FTC sent Walmart a closing letter in October 2015 indicating that it would not pursue further action.<sup>4</sup>

Unfortunately, not only were Walmart's assurances false when it made them last year,<sup>5</sup> but they continue to be false today.

Specifically, TINA.org has compiled a new sampling of over 100 "Made in the USA" misrepresentations that currently exist on Walmart.com. These errors, which are all available at <https://www.truthinadvertising.org/2016-walmart-error-database/>, include (1) instances in which Walmart.com indicates the product is made in the United States while the manufacturer of the product indicates that it was made, either in whole or in part, in other countries, as well as (2) instances in which Walmart.com indicates in one place that the product is made in the United States, and then states in another place on the same webpage that the product may be imported or contain foreign components.<sup>6</sup>

Given the time and resources available to Walmart, there is no justifiable excuse for the existence of false or deceptive "Made in the USA" representations on its website today.

And to add insult to injury, for the past eight months, Walmart.com has posted a “disclaimer” beneath each product listing stating that the “displayed country of origin information may not be accurate or consistent with manufacturer information” and that it is up to the consumer to check the product packaging or manufacturer information to accurately determine a product’s origin.

**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.

As a matter of law (and as explained in detail our November 2015 letter), such a disclosure cannot be used as cover for a false and deceptive U.S.-origin claim.<sup>7</sup> Not only is it legally ineffective in that a disclosure can never be used to cure a false claim, but its placement is such that the vast majority of consumers (who are being told that the burden of determining product origin is now on them) will never see it.

In short, Walmart has shown itself unwilling to comply with FTC law despite the fact that it has had over a year to take corrective action.<sup>8</sup> Clearly, FTC intervention is needed at this time for if the largest retailer in the world is permitted to flout the law in such a persistent and egregious manner, it sends a clear message to all that Walmart is held to a different standard.

If you have any questions or need further information, please do not hesitate to contact us.

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 Protection, FTC  
Leon Bechet, Associate General Counsel, Wal-Mart Stores, Inc.  
Annemarie O’Shea, Associate General Counsel, Wal-Mart Stores, Inc.

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<sup>1</sup> See June 22, 2015 letter from TINA.org to Walmart, available at [https://www.truthinadvertising.org/wp-content/uploads/2015/06/6-22-15-ltr-to-Walmart-from-TINA\\_Redacted.pdf](https://www.truthinadvertising.org/wp-content/uploads/2015/06/6-22-15-ltr-to-Walmart-from-TINA_Redacted.pdf); TINA.org 2015 Database of Walmart Errors, available at <https://www.truthinadvertising.org/walmart-database/>.

<sup>2</sup> See June 24, 2015 letter from Walmart to TINA.org, available at <https://www.truthinadvertising.org/wp-content/uploads/2015/06/Letter-to-TINA-from-Walmart.pdf>; Oct. 20, 2015 letter from FTC to Walmart, available at <https://www.truthinadvertising.org/wp-content/uploads/2015/10/ftc-letter-to-walmart.pdf>.

<sup>3</sup> Oct. 20, 2015 letter from FTC to Walmart.

<sup>4</sup> *Id.*

<sup>5</sup> See Nov. 12, 2015 letter from TINA.org to FTC, available at <https://www.truthinadvertising.org/wp-content/uploads/2015/11/11-12-15-ltr-from-TINA-to-FTC-re-Walmart-USA-disclosure.pdf>.

<sup>6</sup> TINA.org also found at least one example of Walmart still using the original “Made in the USA with over 50% U.S. parts” label, a label that is deceptive in its design (for the reasons explained in TINA.org’s July 2015 letter to the FTC) and which the company said it had fully removed from Walmart.com. See <http://www.walmart.com/ip/Peg-Perego-Polaris-Outlaw-ATV-12-Volt-Ride-On/13398160> (also available at [https://www.truthinadvertising.org/wp-content/uploads/2016/06/Walmart-USA-Label\\_Peg-Perego-Polaris-Outlaw-ATV.png](https://www.truthinadvertising.org/wp-content/uploads/2016/06/Walmart-USA-Label_Peg-Perego-Polaris-Outlaw-ATV.png)).

<sup>7</sup> See Nov. 12, 2015 letter from TINA.org to FTC, available at <https://www.truthinadvertising.org/wp-content/uploads/2015/11/11-12-15-ltr-from-TINA-to-FTC-re-Walmart-USA-disclosure.pdf>.

<sup>8</sup> As we have previously indicated, surveys in recent years have shown that 78% of Americans would rather buy American-made products than ones made abroad, and more than 80% are willing to pay more for “Made in the USA” products than their foreign counterparts. See 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>; 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>.

Walmart is apparently aware that “Made in the USA” pays as it continues its self-proclaimed mission to “accelerate growth in U.S. manufacturing.” The company is hosting its 2016 U.S. Manufacturing Supplier Summit today, June 28, 2016. See <http://news.walmart.com/events/2016-us-manufacturing-supplier-summit>.