



June 7, 2023

Docket Clerk
U.S. Department of Agriculture
Food Safety and Inspection Service
1400 Independence Avenue SW
Mailstop 3758
Washington, DC 20250-3700

Re: Docket No. FSIS-2022-0015

Truth in Advertising, Inc. (“TINA.org”) welcomes the opportunity to submit the following in conjunction with the Food Safety and Inspection Service’s (“FSIS”) March 13, 2023 request for comments regarding its proposal to amend 9 CFR part 412, regulations that define the conditions under which the labeling of meat, poultry, and egg products, as well as voluntarily-inspected products, may bear voluntary label claims indicating that the product is of United States origin (e.g., “Product of USA,” “Made in the USA”).¹

As explained in more detail below, TINA.org supports FSIS’s proposal to amend the definition and scope of Product of USA labeling as the current definition defies logic and misleads consumers. The data are clear that U.S. consumers – who prefer and are willing to pay a premium for U.S. meat products – reasonably believe that U.S.-origin labeling means that the meat products come from animals that are born, raised, and slaughtered in the U.S. Moreover, there is no realistic way for consumers to ascertain the true origin of meat products sold in the United States. Because of the informational asymmetry that exists between consumers and industry, consumers are forced to rely on companies’ misleading origin claims. For these reasons, among others, FSIS should amend the definition of Product of USA as proposed. Further, TINA.org urges FSIS to apply this revised definition not only to physical labels, but to digital labels as well, as nearly half of Americans purchase their groceries, including meat products, online without ever seeing physical labels. This approach would be consistent with the Federal Trade Commission’s Made in USA Labeling Rule. Finally, TINA.org urges FSIS to rigorously enforce the proposed rule in order to properly protect consumers.

INTEREST OF COMMENTER

TINA.org is a nonpartisan, nonprofit consumer advocacy organization whose mission is to combat deceptive advertising and consumer fraud; promote understanding of the serious harms commercial dishonesty inflicts; and work with consumers, businesses, independent experts, synergy organizations, self-regulatory bodies and government

agencies to advance countermeasures that effectively prevent and stop deception in the economy. At the center of TINA.org’s efforts is its website, www.tina.org, which provides information about common deceptive advertising techniques, consumer protection laws, and alerts about specific deceptive marketing campaigns—such as nationally advertised “Built in the USA” vans manufactured abroad;² pillows and essential oils falsely marketed as being able to treat chronic diseases;³ and a delivery meal kit service that falsely advertises free meals.⁴ The website functions as a clearinghouse, receiving consumer complaints about suspicious practices, which TINA.org investigates and, when appropriate, takes up with businesses and regulatory authorities. The website is also a repository of information relating to consumer protection lawsuits and regulatory actions.

Through its collaborative approach and attention to emerging issues and complexities, TINA.org has become a trusted source of expertise on matters relating to consumer fraud, and has testified before Congress on issues related to consumer protection, deceptive marketing and economic justice.⁵ TINA.org regularly draws on its expertise to advocate for consumer interests before the FTC and other governmental bodies and appears as *amicus curiae* in cases raising important questions of consumer protection law.⁶

Since its inception, TINA.org has filed legal actions against hundreds of companies and entities, published more than 1,300 ad alerts, written over 1,000 news articles, and tracked more than 4,000 federal class actions alleging deceptive marketing. Notably, since 2015, state and federal agencies have obtained more than \$250 million from wrongdoers based on TINA.org legal actions and evidence, and returned millions in ill-gotten gains to consumers.

With respect to U.S.-origin claims specifically, TINA.org has investigated and reported on dozens of companies marketing their products with deceptive Made in USA claims;⁷ catalogued more than 1,500 examples of deceptive origin marketing representations;⁸ sent more than 10 warning and notification letters to companies concerning U.S. marketing claims;⁹ and filed complaints with state and federal regulators regarding more than a dozen companies, brands and entities engaged in deceptive Made in USA marketing, including Walmart, Target, Gillette, Williams-Sonoma, and New Balance.¹⁰ As a result of TINA.org’s efforts, more than a thousand false origin claims have been modified or removed from the internet, companies have revamped their product labeling, national advertising campaigns have been halted, and the FTC has imposed fines of \$1 million.¹¹ TINA.org is also tracking more than 50 class-action lawsuits challenging Made in USA marketing claims, nearly a quarter of which pertain to the marketing of beverages and food, including meat products.¹²

In addition, in 2019, TINA.org successfully petitioned the FTC to use its rulemaking authority to expand its enforcement abilities and better defend the Made in USA marketing designation by enacting a regulation that would give the agency the option to seek monetary penalties against first-time offenders who ignore the law.¹³ The FTC acted on TINA.org’s petition and, in August 2021, the FTC’s Made in USA Labeling Rule,

which prohibits the use of physical and digital Made in USA labels unless “all or virtually all” of the labeled product was made in the U.S., went into effect.¹⁴

THE PROPOSED AMENDMENTS ARE NECESSARY TO PROTECT U.S. CONSUMERS AND DOMESTIC FARMERS

A majority of U.S. consumers prefer American-made products and are willing to pay a premium for them.¹⁵ This is especially true of meat products, for which American consumers are willing to pay the greatest price premium when all production steps (i.e., born, raised, slaughtered, and processed) take place in the U.S.¹⁶ In addition to preference, U.S. consumers simply want to know where their food is from. An overwhelming 93 percent of American consumers report wanting this origin information, and 75 percent believe the origin of their food is a major attribute when making their food choices.¹⁷

The problem is that consumers, who mistakenly believe that “Product of USA” means that the animal is U.S.-born, raised, slaughtered and processed,¹⁸ are not able to obtain accurate origin information about the meat products they purchase, as demonstrated by TINA.org’s efforts to obtain such origin information.

Specifically, during a year-long investigation, TINA.org attempted to ascertain the origin information of specific meat products to no avail. TINA.org’s first step in its quest for this information was the USDA Economic Research Service where a representative informed TINA.org that import and export data regarding meat products is considered “business confidential” and therefore not generally disclosed by the USDA.¹⁹ Further complicating matters, according to the representative, is the fact that “when it comes to beef, you’re talking about an animal that was at least a year old at slaughter and may have changed ownership at multiple stages of its life” crossing international borders throughout that time.²⁰ As such, it is unlikely that the USDA would or could provide origin information, according to the representative, who suggested TINA.org contact the companies selling the products for this information instead.

TINA.org next filed two Freedom of Information Act (FOIA) requests with the USDA on January 4, 2021 requesting origin data for beef and pork products subject to 2019, 2020, and 2021 recalls – i.e., meat products deemed by FSIS to be adulterated or misbranded²¹ – the hypothesis being that if the USDA would ever disclose origin information about meat products, it would be when the agency publicly determined the products were mislabeled or unfit for human consumption.²² However, after numerous follow-up emails and telephone calls with various USDA representatives regarding TINA.org’s requests, TINA.org learned that the USDA’s foreign counterparts in the countries from where the animals and products were imported can choose to categorize the requested information as proprietary and therefore not disclosable.

Subsequently, in May and June 2021, four plus months after TINA.org’s initial FOIA requests, the USDA informed TINA.org that many of the responsive records were being withheld in full because they contained “commercial or financial information that is

customarily treated as private by the business submitters” and is therefore “considered confidential.”²³ In total, origin data for only 5 of 88 recalls listed in TINA.org’s FOIA requests were produced.²⁴ As a result, TINA.org appealed the USDA’s refusal to disclose the origin information, explaining, among other things, that TINA.org was not seeking commercial or financial information, but rather, country of origin information *only* – that is, where did the animal and/or raw meat used in products that were recalled by the USDA and consumed by U.S. consumers originate from, as such information is of vital importance to U.S. consumers.²⁵

On October 15, 2021 and December 2, 2021, the USDA provided data for only three additional recalls,²⁶ meaning that after 13 months, countless emails, numerous phone calls, petitions and letters, TINA.org was only able to obtain incomplete and confusing origin information for less than 9 percent of the meat products requested. This astonishingly arduous process was a complete failure and made clear that it is impossible for consumers to obtain origin information about the meat they are consuming. That companies and foreign entities are able to shield origin information as confidential and therefore not disclosable is shameful and results in enormous informational asymmetry between companies and consumers. Additionally, there’s nothing preventing meat producers from profiting by misleading U.S. consumers regarding origin claims.

By way of example, U.S. consumers have no realistic way of ascertaining where the animals used in the following “Product of USA” beef products were born, raised, or slaughtered:



Given the impossibility of obtaining origin information, coupled with consumer confusion as to what “Product of USA” actually means, an amended rule is necessary to protect not only U.S. consumers from harm, but domestic farmers who raise cattle in the U.S. from start to finish.

THE PROPOSED RULE SHOULD APPLY TO PHYSICAL AND DIGITAL LABELS

The proposed amendments to the definition of “Product of USA” concern “label claims,”²⁷ which, according to FSIS, are claims on “a display of any printing, lithographing, embossing, stickers, seals, or other written, printed, or graphic matter upon the immediate container (not including package liners) of any products.”²⁸ Other types of marketing materials, including digital labels, do not appear to be included in the proposed amendments or the FSIS definition of “label.”

However, Product of USA claims about meat products exist in many places other than the physical labels on the “immediate container” of products, including on digital labels. The following are some examples of digital images of package labels from various sources.

(Note: TINA.org is not suggesting that any of the products shown below or above are mislabeled. In fact, TINA.org does not have any origin information regarding these products other than what is noted on the labels.)

Meat company website²⁹



Costco website³⁰



Instacart website³¹





In the modern, e-commerce economy, physical labels and digital labels are functional equivalents, serving the same purpose of informing consumers of a product’s country of origin. Moreover, millions of consumers purchase their groceries online without ever having the opportunity to see a physical label. In fact, approximately 150 million American consumers – close to half of the country’s population – purchase groceries online, a number that will only continue to grow.³³ And grocery purchases in the U.S. almost always include meat products, with 98.5 percent of American households buying meat as of 2022.³⁴

Accordingly, TINA.org urges FSIS to include digital labels within the proposed rule. By covering both physical and digital labels, the proposed rule would appropriately offer protection in all contexts. By contrast, if the rule is limited to physical labels, it will create an exception that swallows the rule – physical and online Product of USA labeling will face inconsistent regulations, companies who want to deceive will find a way around the narrow rule, and American consumers will be left vulnerable.

Including digital labels in the amended rule would also be consistent with the FTC’s Made in USA Labeling Rule, which, in addition to physical labels, also applies to any “seal, mark, tag, or stamp labeling a product Made in the United States” included in “any materials, used in the direct sale or direct offering for sale of any product or service, that are disseminated in print or by electronic means, and that solicit the purchase of such product or service by mail, telephone, electronic mail, or some other method without examining the actual product purchased.”³⁵

As then-Commissioner Chopra stated, “The growing proportion of consumer goods purchased online has made it easier for foreign counterfeiters to trick consumers and steal

sales from companies that tell the truth. ... this puts small firms that rely on the Made in USA label at a disadvantage in online marketplaces flooded with counterfeits.”³⁶

At present, FSIS’s position with respect to Product of USA label claims is inconsistent with the FTC’s position on U.S.-origin labeling claims. Revising the rule to include digital labels would bring FSIS’s rule in line with the FTC’s, providing greater consistency in the marketplace and helping eliminate confusion among consumers.³⁷

THE PROPOSED RULE MUST BE RIGOROUSLY ENFORCED

Revising the definition of Product of USA, alone, will not be sufficient to ensure brands label their meat products in a manner that does not mislead consumers. TINA.org’s Made in USA investigations in other industries have revealed that companies frequently continue to use deceptive U.S.-origin claims to market products even after being made aware that they have violated the law.

TINA.org has documented how large, sophisticated companies like Walmart,³⁸ Target,³⁹ Williams-Sonoma,⁴⁰ and New Balance,⁴¹ have repeatedly violated Made in USA laws. And the FTC has played a game of whack-a-mole with multiple companies that have continued to violate U.S.-origin laws after receiving closing letters or entering into settlements with the Commission, including Stanley Works,⁴² Williams-Sonoma,⁴³ iSpring Water Systems,⁴⁴ IKEA,⁴⁵ and Resident Home/Nectar Brands.⁴⁶

The failure to adequately police companies’ use of U.S.-origin claims harms law-abiding businesses who truthfully market their products as American made.⁴⁷ Undeniably, “[s]ellers gain a competitive advantage when they falsely market a product as Made in USA.”⁴⁸

Underenforcement of deceptive U.S.-origin claims also harms consumers. As the California Supreme Court has explained:

For each consumer who relies on the truth and accuracy of a label and is deceived by misrepresentations into making a purchase, the economic harm is the same: the consumer has purchased a product that he or she *paid more for* than he or she otherwise might have been willing to pay if the product had been labeled accurately. This economic harm—the loss of real dollars from a consumer’s pocket—is the same whether or not a court might objectively view the products as functionally equivalent. A counterfeit Rolex might be proven to tell the time as accurately as a genuine Rolex and in other ways be functionally equivalent, but we do not doubt the consumer (as well as the company that was deprived of a sale) has been economically harmed by the substitution in a manner sufficient to create standing to sue. Two wines might to almost any palate taste indistinguishable—but to serious oenophiles, the difference between one year and the next, between grapes from one valley and another nearby, might be sufficient to carry with it real economic differences in how much they would pay. Nonkosher meat

might taste and in every respect be nutritionally identical to kosher meat, but to an observant Jew who keeps kosher, the former would be worthless.⁴⁹

In short, an amended rule will be of little import – and will not effectively prevent harm – if companies choose to ignore it. Only through rigorous enforcement will companies pay heed to the revisions. Though marketers may be aware of the rule and change in definition, they will have little reason to follow it if the risk of enforcement is low. As such, TINA.org urges FSIS to rigorously enforce the proposed rule once amended.

CONCLUSION

To make rational economic decisions about the meat products they are purchasing, consumers must have accurate information. However, the serious informational imbalance between companies and consumers concerning product origin coupled with consumers' confusion concerning the meaning of "Product of the USA" makes it possible for companies to exploit consumers and profit from their misunderstandings. As a result, it is incumbent on the USDA to protect consumers from misleading and deceptive origin claims. As such, TINA.org supports FSIS's proposed amendments to 9 CFR part 412, urges the agency to apply the revised definition to digital labels, and encourages it to rigorously enforce the rule.

Sincerely,



Bonnie Patten
Laura Smith
Truth in Advertising, Inc.

¹ Voluntary Labeling of FSIS-Regulated Products With U.S.-Origin Claims, 88 Fed. Reg. 15290 (Mar. 13, 2023), <https://www.federalregister.gov/documents/2023/03/13/2023-04815/voluntary-labeling-of-fsis-regulated-products-with-us-origin-claims>.

² TINA.org's Mercedes-Benz Investigation, <https://truthinadvertising.org/brands/mercedes-benz/>.

³ TINA.org's MyPillow Investigation, <https://truthinadvertising.org/brands/mypillow/>; TINA.org's doTerra Investigation, <https://truthinadvertising.org/brands/doterra/>; TINA.org's Young Living Investigation, <https://truthinadvertising.org/brands/young-living/>.

⁴ TINA.org's HelloFresh Investigation, <https://truthinadvertising.org/brands/hellofresh/>.

⁵ *Safeguarding American Consumers: Fighting Fraud and Scams During the Pandemic Before the Subcomm. on Consumer Prot. and Com. of the Comm. on Energy and Com.*, 117th Cong. (Feb. 4, 2021) (testimony of Bonnie Patten, Exec. Dir., Truth In Advertising), <https://truthinadvertising.org/action/house-testimony-2021-summary-action/>; *Curbing COVID Cons: Warning Consumers about Pandemic Frauds, Scams, and Swindles Before the Subcomm. on Consumer Prot., Prod. Safety, and Data Sec. of the Comm. on Com., Sci., & Transp.*, 117th Cong. (Apr. 27, 2021), (testimony of Bonnie Patten, Exec. Dir., Truth In Advertising), <https://truthinadvertising.org/action/senate-testimony-2021-summary-action/>.

⁶ For example, TINA.org participated as amicus curiae in *AMG Capital Management, LLC v. Federal Trade Commission*. Brief of Amicus Curiae Truth In Advertising, Inc. In Support of Respondent, *AMG Capital Mgmt., LLC v. Fed. Trade Comm'n*, No. 19-508 (U.S. Dec. 7, 2020), https://www.supremecourt.gov/DocketPDF/19/19-508/162934/20201207192719389_19-508%20brief.pdf. TINA.org also filed an amici curiae brief in *Federal Trade Commission v. Quincy Bioscience Holding Co., Inc.*, which reinstated a Section 13(b) suit against a business falsely marketing a dietary supplement to the elderly as clinically proven to improve memory. Brief of Amici Curiae Truth In Advertising, Inc. et al. in Favor of Appellants and in Support of Reversal, *Fed. Trade Comm'n v. Quincy Bioscience Holding Co., Inc.*, 753 Fed. Appx. 87 (2d Cir. 2019) (No. 17-3745), https://truthinadvertising.org/wp-content/uploads/2018/03/Prevagen_Amici-Curiae-brief.pdf.

⁷ See, e.g., TINA.org's Made in USA Ad Alerts, <https://truthinadvertising.org/ad-alerts/?f-search=&f-tactic%5B%5D=4696>.

⁸ TINA.org's Almay Investigation, <https://truthinadvertising.org/brands/almay/>; TINA.org's Walmart Investigations, <https://truthinadvertising.org/brands/walmart/>; TINA.org's GSA Advantage Investigation, <https://truthinadvertising.org/brands/gsa-advantage/>; TINA.org's Target Investigation, <https://truthinadvertising.org/brands/target/>; TINA.org's Gillette Investigation, <https://truthinadvertising.org/brands/gillette/>; TINA.org's Williams-Sonoma Investigation, <https://truthinadvertising.org/brands/williams-sonoma/>; TINA.org's New Balance Investigation, <https://truthinadvertising.org/brands/new-balance/>; TINA.org's Step2 Investigation, <https://truthinadvertising.org/brands/step2/>; TINA.org's Mercedes-Benz Investigation, <https://truthinadvertising.org/brands/mercedes-benz/>.

⁹ Letter from TINA.org to Mercedes-Benz (Nov. 1, 2022), https://truthinadvertising.org/wp-content/uploads/2022/10/11_1_22-TINA-ltr-to-Mercedes-Benz-re-MUSA-claims.pdf; Letter from TINA.org to BMW (Nov. 1, 2022), https://truthinadvertising.org/wp-content/uploads/2022/10/11_1_22-TINA-ltr-to-BMW-re-MUSA-claims.pdf; Letter from

TINA.org to Ford (Nov. 1, 2022), https://truthinadvertising.org/wp-content/uploads/2022/10/11_1_22-TINA-ltr-to-Ford-re-MUSA-claims.pdf; Letter from TINA.org to Honda (Nov. 1, 2022), https://truthinadvertising.org/wp-content/uploads/2022/10/11_1_22-TINA-ltr-to-Honda-re-MUSA-claims.pdf; Letter from TINA.org to Mazda (Nov. 1, 2022), https://truthinadvertising.org/wp-content/uploads/2022/10/11_1_22-TINA-ltr-to-Mazda-re-MUSA-claims.pdf; Letter from TINA.org to Tesla (Nov. 1, 2022), https://truthinadvertising.org/wp-content/uploads/2022/10/11_1_22-TINA-ltr-to-Tesla-re-MUSA-claims.pdf; Letter from TINA.org to Toyota (Nov. 1, 2022), https://truthinadvertising.org/wp-content/uploads/2022/10/11_1_22-TINA-ltr-to-Toyota-re-MUSA-claims.pdf; Letter from TINA.org to Mercedes-Benz (March 22, 2019), https://truthinadvertising.org/wp-content/uploads/2019/03/Warning-Letter-TINA-to-MB-Vans-3_22_19-REDACTED.pdf; Letter from TINA.org to Procter & Gamble (Dec. 21, 2017), https://truthinadvertising.org/wp-content/uploads/2018/01/12_21_17-Letter-from-TINA-to-PG-Gillette_Redacted.pdf; Letter from TINA.org to Step2 (July 11, 2017), https://truthinadvertising.org/wp-content/uploads/2017/07/7_11_17-ltr-from-TINA-to-Step2_Redacted-1.pdf; Letter from TINA.org to Walmart (June 22, 2015), https://truthinadvertising.org/wp-content/uploads/2015/06/6-22-15-ltr-to-Walmart-from-TINA_Redacted.pdf; Letter from TINA.org to Revlon (May 8, 2015), https://truthinadvertising.org/wp-content/uploads/2015/05/5.8.15-ltr-from-TINA-to-Revlon_Redacted.pdf.

¹⁰ Letter from TINA.org to FTC regarding New Balance Athletics, Inc.’s Violations of Made in USA Laws (Sept. 20, 2021), https://truthinadvertising.org/wp-content/uploads/2021/09/9_20_21-Complaint-to-FTC-re-New-Balance.pdf; Letter from TINA.org to FTC regarding Williams-Sonoma, Inc.’s Continuing Use of False Made in the USA Marketing (across its seven brands) (May 21, 2019), https://truthinadvertising.org/wp-content/uploads/2019/05/5_21_19-ltr-to-FTC-re-Williams-Sonoma-Made-in-USA-marketing_Redacted.pdf; Letter from TINA.org to FTC regarding Gillette’s False and Deceptive Made in USA Marketing Campaign (Jan. 22, 2018), https://truthinadvertising.org/wp-content/uploads/2018/01/1_22_18-ltr-to-FTC-re-Gillette_Redacted.pdf; Letter from TINA.org to FTC regarding Target Corporation’s False and Deceptive Made in USA Representations (June 26, 2017), https://truthinadvertising.org/wp-content/uploads/2017/06/6_26_17-ltr-from-TINA-to-FTC-re-Target_Redacted.pdf; Letter from TINA.org to FTC regarding Walmart’s Continuing Use of False and Deceptive Made in USA Representations (June 28, 2016), https://truthinadvertising.org/wp-content/uploads/2016/06/6_28_16-ltr-from-TINA-to-FTC-re-Walmart-Made-in-USA_Redacted.pdf; Letter from TINA.org to GSA regarding Numerous Made in USA misrepresentations on GSA Advantage website (March 11, 2016), https://truthinadvertising.org/wp-content/uploads/2016/03/3.11.16-TINA-letter-to-GSA_Redacted.pdf; Letter from TINA.org to FTC regarding Walmart.com’s Inadequate Made in the USA Disclosure (Nov. 12, 2015), <https://truthinadvertising.org/wp-content/uploads/2015/11/11-12-15-ltr-from-TINA-to-FTC-re-Walmart-USA-disclosure.pdf>; Letter from TINA.org to FTC regarding Wal-mart Stores, Inc.’s False and Deceptive Representations (July 14, 2015), https://truthinadvertising.org/wp-content/uploads/2015/07/Walmart-FTC-letter_Redacted.pdf; Letter from TINA.org to FTC regarding Almay’s Deceptive Simply American Campaign (May 19, 2015), <https://truthinadvertising.org/wp-content/uploads/2015/05/Complaint-Letter-to-FTC-emails-redacted.pdf>; Letter from TINA.org to NY Attorney General regarding Almay’s Deceptive Simply American Campaign (May 19, 2015), <https://truthinadvertising.org/wp-content/uploads/2015/05/Complaint-Letter-to-NY-AG-emails-redacted.pdf>.

¹¹ See, e.g., TINA.org’s Made in USA Actions, <https://www.truthinadvertising.org/tina-orgs-made-in-usa-actions/>; *FTC v. Williams-Sonoma, Inc.*, File No. 202 3025, Agreement Containing

Consent Order, <https://truthinadvertising.org/wp-content/uploads/2020/03/Williams-Sonoma-Cosent-Order.pdf>.

¹² *By the Numbers: Made in the USA Class-Action Lawsuits*, TINA.org, Mar. 26, 2019 (updated Apr. 26, 2023), <https://truthinadvertising.org/articles/by-the-numbers-made-in-the-usa-class-action-lawsuits/>.

¹³ TINA.org’s Petition for Rulemaking to Promulgate Regulations for Made in the USA Claims, Aug. 22, 2019, https://truthinadvertising.org/wp-content/uploads/2019/08/TINA_org-Petition-for-Rulemaking-to-Promulgate-Regulations-for-Made-in-the-USA-Claims.pdf.

That same year, TINA.org’s Executive Director was invited to participate in the FTC’s Made in the USA Workshop in 2019. *See* Made in the USA: An FTC Workshop, Sept. 26, 2019, <https://www.ftc.gov/news-events/events/2019/09/made-usa-ftc-workshop>.

¹⁴ Made in USA Labeling Rule, 16 CFR Part 323, <https://www.federalregister.gov/documents/2021/07/14/2021-14610/made-in-usa-labeling-rule>; <https://www.ecfr.gov/current/title-16/chapter-I/subchapter-C/part-323>.

¹⁵ *See* Press Release, Reshoring Institute, Survey Says: Americans Prefer “MADE IN USA,” (Oct. 30, 2020), <https://www.prnewswire.com/news-releases/survey-says-americans-prefer-made-in-usa-301163756.html> (reporting that nearly 70 percent of Americans prefer American-made products and that more than 83 percent would pay up to 20 percent more for products made domestically); “Made in America,” *Consumer Reports*, May 21, 2015, <https://www.consumerreports.org/cro/magazine/2015/05/made-in-america/index.htm> (reporting that 8 out of 10 American consumers would rather buy American-made products than imported ones and more than 60 percent are even willing to pay 10 percent more for them); “Price of patriotism: How much extra are you willing to pay for a product that’s made in America?,” *REUTERS*, July 18, 2017, <http://fingfx.thomsonreuters.com/gfx/rngs/USA-BUYAMERICAN-POLL/01005017035/index.html> (reporting on a national survey finding that nearly half of Americans would pay a premium of 5 to 10 percent); Eric Schurenberg, “*What is ‘Made in America’ Worth?*,” *Inc.com*, Nov. 12, 2012, <https://www.inc.com/eric-schurenberg/what-is-made-in-america-worth.html> (reporting that “buyers have proven that they’ll pay considerably more for some kinds of American-made goods—simply because they expect them to be a better value.”); Concurring Statements of Commissioner Roscoe B. Starek, III, *Regarding Enforcement Policy Statement on U.S. Origin Claims*, 62 Fed. Reg. 63771 (Dec. 2, 1997) (“[C]onsumers who believe that ‘Made in USA means all or virtually all made in the United States are highly motivated to act on their belief.’”).

The rationale for this established consumer preference is multifaceted: The “motivations [that] fuel th[e] preference [for products Made in the USA range], from the desire to support domestic jobs, to beliefs about quality, to concerns about overseas environmental or labor conditions, to simple patriotism.” *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310, 328–29 (Cal. 2011). *See also* Press Release, Reshoring Institute, Survey Says: Americans Prefer “MADE IN USA,” (Oct. 30, 2020), <https://www.prnewswire.com/news-releases/survey-says-americans-prefer-made-in-usa-301163756.html> (finding that nearly half of U.S. consumers believe that products manufactured in America are of better quality than those manufactured in other countries); Reshoring Institute Survey, <https://reshoringinstitute.org/wp-content/uploads/2020/09/made-in-usa-survey.pdf> (same); Statement of Commissioner Rohit Chopra, *In the Matters of Nectar Sleep, Sandpiper/PiperGear USA, and Patriot Puck*, Sept. 12, 2018, at 2, https://www.ftc.gov/system/files/documents/public_statements/1407380/rchopra_musa_statement

[-sept 12.pdf](#) (“A Made-in-USA claim can serve as a key element of a product’s brand that communicates quality, durability, authenticity, and safety, among other attributes.”); Statement of Commissioner Rohit Chopra, *In the Matter of Sandpiper/PiperGear USA*, Apr. 17, 2019, at [attch.1](#),

https://www.ftc.gov/system/files/documents/public_statements/1514787/sandpiper_chopra_disseminating_statement_4-17-19.pdf (“The Made in USA label signals a sense of national pride and can help a brand communicate quality, durability, authenticity, and high standards.”).

¹⁶ Analyzing Consumers’ Value of “Product of USA” Labeling Claims, Final Report, Nov. 30, 2022,

https://www.fsis.usda.gov/sites/default/files/media_file/documents/Product_of_USA_Consumer_Survey_Final_Report.pdf.

¹⁷ Tell USDA: Consumers should know where their meat comes from!, Farm & Ranch Freedom Alliance, July 20, 2018, https://farmandranchfreedom.org/productofusa_labels/; Consumer Reports Memorandum, Oct. 14, 2016,

https://www.ftc.gov/system/files/documents/public_events/975753/cr_intro_and_2016_food_survey.pdf. See also Press Release, U.S. Farmers & Ranchers Alliance, Nationwide Surveys Reveal Disconnect Between Americans and their Food, (Sept. 22, 2011), <https://www.prnewswire.com/news-releases/nationwide-surveys-reveal-disconnect-between-americans-and-their-food-130336143.html>.

¹⁸ Analyzing Consumers’ Value of “Product of USA” Labeling Claims, Final Report, Nov. 30, 2022,

https://www.fsis.usda.gov/sites/default/files/media_file/documents/Product_of_USA_Consumer_Survey_Final_Report.pdf.

¹⁹ Email from G. Grossen to L. Smith regarding cattle import data (Nov. 12, 2020) (attached hereto as Exhibit A).

²⁰ *Id.*

²¹ USDA Food Safety and Inspection Service Recall Overview,

https://www.fsis.usda.gov/sites/default/files/media_file/2020-08/Recall-Presentation-012018.pdf.

²² Letter from L. Smith to A. Perkins (Jan. 4, 2021) requesting origin information pertaining to 2019 USDA recalls (Exhibit B); Letter from L. Smith to A. Perkins (Jan. 4, 2021) requesting origin information pertaining to 2020 and 2021 recalls (Exhibit C).

²³ First Interim Response from USDA to TINA.org (May 4, 2021) (Exhibit D); Final Response from USDA to TINA.org (May 4, 2021) (Exhibit E); Final Response from USDA to TINA.org (June 10, 2021) (Exhibit F).

²⁴ Email from A. Harrid to L. Smith (July 20, 2021, 12:32pm); Email from A. Harrid to L. Smith (July 20, 2021, 12:33pm); Email from A. Harrid to L. Smith (July 20, 2021, 12:37pm); Email from A. Harrid to L. Smith (July 27, 2021) (collectively attached as Exhibit G).

²⁵ TINA.org’s July 29, 2021 Appeal of FOIA Request 2021-FSIS-00121-F (Exhibit H); TINA.org’s Sept. 7, 2021 Appeal of FOIA Request 2021-FSIS-00120-F (Exhibit I).

²⁶ Letter from USDA (Oct. 15, 2021) (Exhibit J); Letter from USDA (Dec. 2, 2021) (Exhibit K).

²⁷ Voluntary Labeling of FSIS-Regulated Products With U.S.-Origin Claims, 88 Fed. Reg. 15290 (Mar. 13, 2023), <https://www.federalregister.gov/documents/2023/03/13/2023-04815/voluntary-labeling-of-fsis-regulated-products-with-us-origin-claims>.

²⁸ 9 CFR §317.2 – Labels: definition; required features, <https://www.ecfr.gov/current/title-9/chapter-III/subchapter-A/part-317>.

²⁹ Authenticity Provisions, American Style Kobe Beef, https://authenticityprovisions.com/assortment/#American_Style_Kobe.

³⁰ Costco Business Center, Charter Reserve Seasoned Angus Roast Beef, Medium Rare, 8 lb avg wt, <https://www.costcobusinessdelivery.com/charter-reserve-seasoned-angus-roast-beef%2c-medium-rare%2c-8-lb-avg-wt.product.100334721.html>.

³¹ Instacart, Wahlburgers Burgers, Famous Gourmet Blend, Fresh Angus, https://www.instacart.com/landing?product_id=18549042&retailer_id=235®ion_id=27852901884&utm_medium=sem_shopping&utm_source=instacart_google&utm_campaign=ad_demand_shopping_rp_food_dmatier1-23_custom-geo&utm_content=accountid-8145171519_campaignid-16692365446_adgroupid-136579440682_device-c&utm_term=targetid-pla-368619977940_locationid-9003332_adtype-pla_productchannel-online_merchantid-178347382_storecode-productid-18549042&gclid=Cj0KCQjw6cKiBhD5ARIsAKXUdyaitAjE8JD5fGZPgIlmt0aYXd-yw80C2wouWvrI0nX0uhAisHWP4TEaAiWSEALw_wcB.

³² Grass Run Farms, June 8, 2020 Facebook post, <https://www.facebook.com/GrassRunFarms/photos/a.321597557930572/3058101097613524/>.

³³ Online grocery shopping in the United States, Statista, Dec. 15, 2022, <https://www.statista.com/topics/1915/online-grocery-shopping-in-the-united-states/#dossier-chapter5> (“In the United States, food and beverage retail e-commerce revenue will exceed 38 billion U.S. dollars in 2022 and is expected to surpass the 47 billion dollar threshold by 2025. The online grocery customer base counts roughly 150 million shoppers, close to half of the country’s population, and is forecast to grow further in the upcoming years.”); Number of online grocery purchasers in the United States from 2018 to 2024, Statista, Dec. 21, 2022, <https://www.statista.com/statistics/1032362/online-grocery-purchasers-united-states/> (“By 2024, the number of online shoppers of grocery products might reach 163 millions in the United States.”). *See also* Share of consumers purchasing groceries online in the United States in 2022, by channel, Statista, Apr. 6, 2023, <https://www.statista.com/statistics/1351763/us-online-grocery-shopping-frequency/> (“A 2022 survey revealed that among online grocery shoppers in the United States, at least two percent exclusively buy groceries using e-commerce. Additionally, 34.5 percent reported using online grocery services sometimes, while 10.5 percent mostly shop online for their grocery needs.”)

³⁴ Zachary Russel, *More Americans purchasing meat since the pandemic began, study finds*, Store Brands, Mar. 7, 2022, <https://storebrands.com/more-americans-purchasing-meat-pandemic-began-study-finds>.

³⁵ Made in USA Labeling Rule, 16 CFR Part 323, <https://www.federalregister.gov/documents/2021/07/14/2021-14610/made-in-usa-labeling-rule>; <https://www.ecfr.gov/current/title-16/chapter-I/subchapter-C/part-323>.

³⁶ Statement of Commissioner Rohit Chopra Regarding Activating Civil Penalties for Made In USA Fraud, Apr. 17, 2019,

https://www.ftc.gov/system/files/documents/public_statements/1514808/chopra_-_activating_civil_penalties_for_made_in_usa_fraud_4-17-19.pdf.

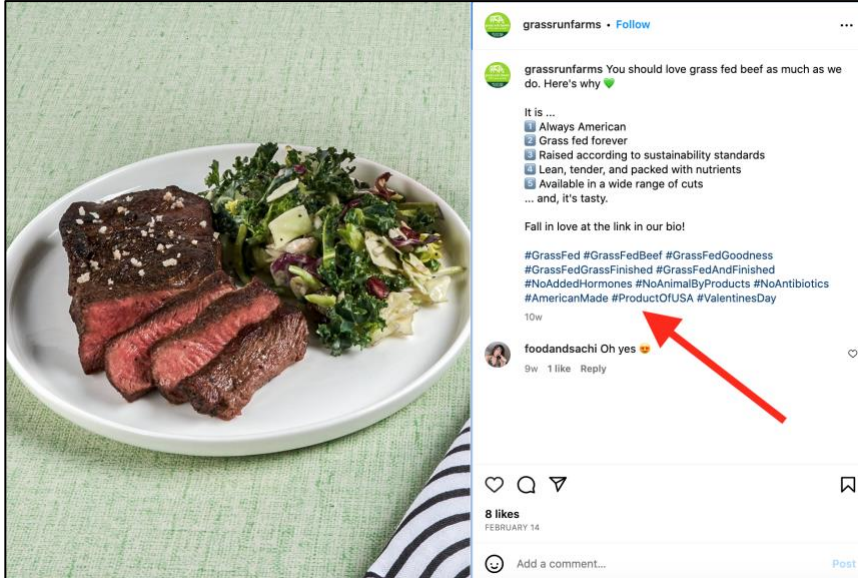
³⁷ FSIS should also consider working with the FTC to ensure U.S.-origin claims made about meat products in other marketing materials, such as social media marketing, television commercials, and website claims, for example, provide truthful and not misleading information about the origin of the products.

Example of website claim



Blackwell Angus website, <https://blackwellangus.com/>

Example of social media claim



Grass Run Farms Feb, 14, 2023 Instagram post, <https://www.instagram.com/p/CoytyGRud0W/>

Not only do the FTC and FSIS routinely collaborate with other federal agencies to better achieve their goals (see USDA FSIS Memorandum of Understanding, <https://www.fsis.usda.gov/about-fsis/food-safety-agency-partners/memoranda-understanding-mou>; FTC Cooperation Agreements, <https://www.ftc.gov/legal-library/browse/cooperation-agreements>), but the USDA has already

expressed interest in synthesizing the two agencies' approaches to U.S.-origin marketing in particular. See Press Release, U.S. Dep't of Agric., USDA Announces Efforts to Promote Transparency in Product of the USA Labeling (July 1, 2021), <https://www.usda.gov/media/press-releases/2021/07/01/usda-announces-efforts-promote-transparency-product-usa-labeling>. See also Interagency Memorandum of Understanding (MOU) between Federal Trade Commission (FTC), the U.S. Department of Justice (DOJ), and the U.S. Department of Agriculture (USDA), Sept. 1999, <https://www.ftc.gov/legal-library/browse/cooperation-agreements/interagency-memorandum-understanding-mou-between-federal-trade-commission-ftc-us-department-justice>.

³⁸ TINA.org's Walmart Investigations, <https://truthinadvertising.org/brands/walmart/>.

³⁹ TINA.org's Target Investigation, <https://truthinadvertising.org/brands/target/>.

⁴⁰ TINA.org's Williams-Sonoma Investigation, <https://truthinadvertising.org/brands/williams-sonoma/>.

⁴¹ TINA.org's New Balance Investigation, <https://truthinadvertising.org/brands/new-balance/>.

⁴² *U.S. v. The Stanley Works*, No. 06-cv-00883, D. Conn., Consent Decree, dated June 13, 2006.

⁴³ See Williams-Sonoma Closing Letter, June 13, 2018, https://www.ftc.gov/system/files/documents/closing_letters/nid/musa_williams-sonoma_closing_letter.pdf; *FTC v. Williams-Sonoma, Inc.*, File No. 202 3025, Agreement Containing Consent Order, <https://truthinadvertising.org/wp-content/uploads/2020/03/Williams-Sonoma-Cosent-Order.pdf>.

⁴⁴ *In the Matter of iSpring Water Systems, LLC*, Docket No. C-4611, Decision and Order, dated Apr. 6, 2017, https://www.ftc.gov/system/files/documents/cases/170414_ispring_do.pdf; *U.S. v. iSpring Water Systems, LLC*, No. 16-cv-1620, N.D. Ga., Stipulated Order for Civil Penalties, Permanent Injunction, and Other Relief, dated Apr. 19, 2019.

⁴⁵ IKEA Closing Letter, Sept. 26, 2011, https://www.ftc.gov/sites/default/files/documents/closing_letters/ikea/110926ikeaclosingltr.pdf; IKEA Purchasing Services Closing Letter, Jan. 19, 2018, https://www.ftc.gov/system/files/documents/closing_letters/nid/musa_ikea_closing_letter.pdf.

⁴⁶ *In the Matter of Resident Home LLC d/b/a Nectar Sleep*, No. 2023179, Complaint, dated Oct. 8, 2021, https://www.ftc.gov/system/files/documents/cases/2023179_-_resident_home_complaint.pdf.

⁴⁷ See Statement of Commissioner Rohit Chopra, *In the Matters of Nectar Sleep, Sandpiper/PiperGear USA, and Patriot Puck*, Sept. 12, 2018, https://www.ftc.gov/system/files/documents/public_statements/1407380/rchopra_musa_statement-sept_12.pdf, at 2 (noting that companies who fraudulently market goods as American-made “punish[] firms that may bear higher costs to produce goods here.”).

⁴⁸ *Id.* at 1.

⁴⁹ *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310, 330 (Cal. 2011).