

## CLIENT MEMORANDUM

# After Two-Year Enforcement Hiatus, FTC Settles False “Made in the USA” Claims Case with a \$220,000 Judgement

October 26, 2016

## AUTHORS

David Mortlock | Miriam A. Bishop

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On October 19, 2016, the U.S. Federal Trade Commission (“FTC”) announced that it had entered into a settlement with the Georgia-based specialty chemical company Chemence, Inc. to stop it from making misleading, unqualified claims that its fast-acting glues are “Made in the USA.” Chemence also agreed to pay a \$220,000 judgment to resolve the lawsuit. This is the first major enforcement action taken by the FTC in nearly two years and the first time, certainly in recent years, that the FTC has obtained a significant financial penalty. The FTC announcement can be found [here](#) and a related blog post by FTC staff can be found [here](#).

### *The “Made in the USA” Standard*

Section 5 of the Federal Trade Commission Act (the “Act”) (15 U.S.C. § 45) prohibits “unfair or deceptive acts or practices in or affecting commerce” and provides the FTC with the authority to require that advertising claims, including “Made in the USA” claims, are truthful and substantiated. Misrepresentations or deceptive omissions of material facts constitute deceptive acts or practices that are prohibited by the Act. The FTC’s standards for “Made in the USA” claims are spelled out in more detail on the FTC Business Center’s Made in the USA page, which can be found [here](#). These standards have remain unchanged for nearly 30 years and require that unqualified U.S. origin claims be substantiated by evidence that the product is “**all or virtually all**” made in the United States. Otherwise, the claims will be considered deceptive.

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### *The Chemence Settlement*

Chemence manufactures Kwik Fix, Hammer Tite, and Krylex Glues, which are fast-acting glues made with cyanoacrylate. The FTC sued Chemence in February 2016 in the U.S. District Court for the Northern District of Ohio, alleging that the company’s “Made in USA” or “proudly made in the U.S.A.” claims for its cyanoacrylate glues were deceptive and did not meet the “all or virtually all” “Made in the USA” test.

According to the FTC, 55% of the cost of the chemicals that made up these glues, including those essential to the glues’ function, came from imports. As a result, the FTC alleged that the Chemence’s “Made in USA” claims were misleading. The FTC also alleged that Chemence assisted others in deceiving consumers by distributing marketing materials to private-label sellers and third-party sites and storefronts that included misleading “Made in USA” claims.

The settlement requires Chemence to change how it advertises its products and prohibits the company from making unqualified “Made in USA” claims for any product unless:

- The company can show the final assembly or processing of the product occurs in the United States, all significant processing that goes into the product occurs in the United States, and all or virtually all ingredients or components of the product are made and sourced in the United States; or
- A clear and conspicuous qualification appears immediately adjacent to the representation that accurately conveys the extent to which the product contains foreign parts, ingredients, and/or processing.

The settlement also included a monetary judgement of \$220,000 as equitable relief to redress the substantial injury to U.S. consumers that resulted from Chemence’s violations. The FTC alleged that Chemence was unjustly enriched as a result of its unlawful acts or practices and was likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

### *Conclusion*

The FTC’s successful lawsuit against Chemence for making unlawful “Made in the USA” claims and the extraction of a significant financial penalty may signal a renewed interest by the FTC in enforcing its strict “Made in the USA” standards. The settlement prompts the question raised in the FTC’s blog post on this case—“Does your company make Made in USA claims on products or packaging, in ads, on your website, or in marketing materials?” If so, it may be time to review the substance of these claims and whether there is sufficient evidence to support the claims.

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If you have any questions regarding this memorandum, please contact David Mortlock (202-303-1136; dmortlock@willkie.com), Miriam A. Bishop (202-303-1126; mbishop@willkie.com) or the attorney with whom you regularly work.

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