"Labeling Apparel – Getting it Right!"

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Responses from the Q&A Portion of the Broadcast

This information has been provided by the webinar presenters: Robin Grover, Amber Road

1. Are there specific guidelines for faux fur labeling?

The FTC does not require faux (also called "artificial" or "fake" fur) to be labeled since it has no actual fur content[1]. Several states, however, have adopted their own regulations which mandate that if an item appears to be fur but does not so qualify the product's label must both state that it is "faux fur" and specify the actual fiber content. As a consequence, many major U.S. retailers of artificial furs and the suppliers of such products to them will require the inclusion of a faux fur label in all such products instead of maintaining two sets of faux fur inventory. It proves costly to maintain one set of such product inventory to be sold in states with faux fur labeling requirements and another set of inventory destined for states that do not have faux fur labeling mandates. Those state regulations requiring the labeling of so-called "faux fur" or "artificial fur" products have been enacted by: Delaware; Massachusetts; New Jersey; New York; Wisconsin.

2. Are socks exempted from the Textile Fiber Identification Act?

No, socks are not exempt, but are covered by the TFIA. See FTC, *Threading Your Way Through the Labeling Requirements Under the Textile and Wool Acts.* The FTC does provide a limited exemption for socks in pairs made of the same fibers: if garments or other textile products with the same fiber content are sold in pairs — like socks, mittens or gloves, or in sets like a suit or a set of dinner napkins — only one part of the pair or set needs to be labeled.

Special country of origin marking requirements also apply to socks. In this regard, the FTC states, "Most socks must be marked on the front of their packages or labels with the English name of the country of origin. This mark must be placed adjacent to the size designation. The mark must be clearly legible, indelible, conspicuous, and readily accessible to the consumer and as permanent as the nature of the article or package permits. The exception: A package that contains several different types of goods and includes socks is

[1] The Commission cannot expand the coverage to include faux fur because the Fur Act applies only to "furs" or "fur products," which are defined as "animal skin * * * with hair, fleece, or fur fibers attached thereto" and "wearing apparel" made of or containing "fur or used fur," respectively. Faux fur is not such an item... See 77 FR 57043 (Sept. 17, 2012).

exempt from this special requirement. However, these packages and their contents are subject to the following labeling requirements." FTC, *Threading Your Way Through the Labeling Requirements Under the Textile and Wool Acts.*

Additional information elaborating on this country of origin marking requirement for socks is provided in a CBP publication: Socks classified under 6115.92.90, 6115.93.90, 6115.99.18, 6111.20.60, 6111.30.50, or 6111.90.50 of the Harmonized Tariff Schedule of the United States are required to be marked on the front of the package, adjacent to the size designation of the product. See 15 U.S.C. § 70b(k): "Any package that contains different types of goods and includes socks is excepted from this requirement. TBT-06-004 New Label Marking Requirements for Socks was issued in February 23, 2006." CBP, *Marking Requirements for Wearing Apparel* (May 2008) at 9.

3. Does the FTC have any rules on providing fiber content on e-commerce sites?

This is what FTC currently states on this subject:

In advertising

"If you use a fiber trademark in your advertising, including in your ads on the internet, you must disclose the fiber content at least once in your ad. Note that you don't have to include the percentages. If the advertised product contains more than one fiber — other than ornamentation — your disclosure of the content must include the fiber trademark and generic name of the fiber immediately next to each other in lettering of equal size and conspicuousness. However, if the advertised product contains only one fiber — other than ornamentation — the fiber trademark and generic name of the fiber must appear immediately next to each other at least once in the ad in lettering that is clearly legible and conspicuous. You can't use an asterisk to signal the generic name of the fiber in a footnote or elsewhere in the ad.

Fiber trademarks used elsewhere in ads must not give a false, deceptive, or misleading message about content; for example, they may not imply that the product is made completely of a certain fiber when it isn't."

FTC, *Threading Your Way Through the Labeling Requirements Under the Textile and Wool Acts*.

The FTC further addresses e-commerce internet advertising:

"The Textile and Wool Acts require you to disclose country of origin information in catalogs and other mail order advertising and in Internet ads that sell textile and wool products. The description of each advertised item must include a statement that it was made in the U.S.A., imported or both. A general statement in your ads that all products are either made in the U.S.A. or imported is not adequate.

Ads that say or imply anything about fiber content must disclose the generic fiber names (as assigned by the FTC) in order of predominance by weight. This requirement applies to all ads, whether or not they solicit direct sales. It is not necessary to state the percentage of each fiber, but fibers present in an amount less than 5 percent should be listed as "other fiber(s)." (There is an exception to the 5 percent requirement for fibers that have a functional significance even in an amount less than 5 percent.)"

FTC, *Advertising and Marketing on the Internet: Rules of the Road*.

In 2014, the FTC amended Section 303 of its regulations to recognize the increasing use of e-commerce and electronic documents. It did so by amending the terms "invoice" and "invoice or other paper by replacing the word "paper" with the word "document." It also specifically acknowledged that such documents can be issued electronically and explicitly permits the keeping of required records "in a form that is capable of being accurately reproduced for later reference, whether by transmission, printing, or otherwise." See 79 FR 18766 (April 4, 2014).

4. For FTC violations of mislabeling covered products - what constitutes a "separate violation" is individual styles? Total units sold?

Each "instance of mislabeling" under the Textile, Wool and Fur Acts is considered a separate violation, which is not defined. At its extreme, I would imagine that this could apply to each individual style or lot, enabling the FTC to massively pile up the potential civil fine. In reality, the FTC settles for much less, although the penalties are not insignificant. In addition to the recent penalty actions discussed on the slides for the webinar, a few other civil cases brought by the FTC for mislabeling illustrate the range of monetary penalties that the agency can apply. Thus, in 1999, Tommy Hilfiger U.S.A. was required to pay $300,000 in penalties for selling garments with labeling instructions that violated the Care Labeling Rule and damaged the clothing. Three years later, Jones Apparel paid the same amount for purported violations of the care labeling requirements. Cabot Hosiery Mills, Inc. overstated the cotton and spandex fiber content in certain of their socks and paid $ 10,000 in fines to the FTC.

Reference – Miscellaneous FTC press releases.

5. **On the last example, would you state the 3% other before the 2% spandex?**

   You probably prefer to state the spandex percentage before the "3% other". You can do this under the FTC published examples which specifically put the 4% polyamide content before the "other fibers" at 6 percent:

   Example:
   90% Cotton
   4% Polyamide
   6% Other Fibers

   Source: FTC: *Threading Your Way Through the Labeling Requirements Under the Textile and Wool Acts*.

   If there are multiple, non-functionally-significant fibers present in amounts of less than 5% each, designate their aggregate percentage, even if it's greater than 5%. Source: FTC, *Threading Your Way Through the Labeling Requirements Under the Textile and Wool Acts*.

6. **We import wool fibers, but the yarn is spun, finished, and knit into hats in the US. Can we label the hats as "Made in USA"?**

   It is unlikely that the finished hats could not be so labeled if for domestic sale in the United States under the "all or virtually all" contributing US content rule requirement of the FTC's "Made in America" standard. (For more on the standard, see the online FTC publication, *Complying with the Made in USA Standard*, https://www.ftc.gov/system/files/documents/plain-language/bus03-complying-made-usa-standard.pdf. The fiber is not a zipper, button or minor ornamentation but is at the heart of the hat's content. Moreover, the value of the imported wool fibers would probably constitute over 5 percent (the usual threshold for allowable foreign content under the FTC policy). Interestingly, you could mark the hats "Made in USA" for those hats intended solely for export – the FTC rule applies only to domestic sale and the world standard of substantial transformation would apply. Substantial transformation requires the foreign content to undergo processing in the U.S. that would render it into a new product with a new, name, character or use. Foreign fiber spun into yarn in the U.S. and then made into finished hats in the U.S. would almost certainly qualify as having been "substantially transformed," thus enabling the exporter to claim

that the hats are of American origin, but such hats as sold for domestic sale could not be marked "Made in America" or with similar language.

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To contact Robin Grover:
Law Office of Robin W. Grover
Washington, D.C.
Tel. No.: (202) 302-1653
www.GroTradelaw.com