FDRA

FOOTWEAR LABELLING EQUIREMENTS April 2023

This memorandum describes the multiple labeling requirements applicable to footwear. They include country of origin marking and content labeling.

Origin Marking

A. General. The requirements for marking and labeling imported merchandise with the country of origin are found in Section 304 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1304. The implementing regulations are found at 19 C.F.R. Part 134.

Section 304 of the Tariff Act of 1930 provides generally that, with a few narrow exceptions, articles of foreign origin (or their containers when the articles per se are exempt from marking) must be legibly, permanently and conspicuously marked to disclose the country of origin to an ultimate purchaser in the United States.[1] If an article is not marked at the time of importation and it is not marked, destroyed or exported prior to distribution into commerce, an additional duty of 10% ad valorem may be imposed. Concealing, defacing, destroying, removing, or altering a country-of-origin mark is a criminal offense.

The country-of-origin mark must survive importation and distribution from the importer to the ultimate purchaser. Generally, the ultimate purchaser is the last person in the United States who will receive the article in its condition as imported. When the importer is considered the ultimate purchaser, the mark need not survive transfer by the importer. The two typical situations where the importer is considered the ultimate purchaser are: 1) when the importer consumes the imported product; and 2) when the importer manufactures the imported product into a new article but only if the manufacturing process results in the substantial transformation of the imported article. Other than articles subject to the Textile Products Identification Act, imported articles that are substantially transformed after importation are not subject to country-of-origin marking requirements.

B. Forms of Marking. To satisfy Section 304, a country-of-origin mark must be legible, conspicuous, and permanent.

The requirement of legibility is satisfied by a marking having a size and clarity adequate for easy reading by a person of normal vision.

The degree of permanency necessary is that sufficient to ensure that the mark will remain on the imported article until it reaches the ultimate purchaser. A mark that will not remain on the article during handling and is likely to fall off for any reason, except deliberate removal, is not acceptable. Stickers are acceptable if they have the appropriate degree of permanency.

The mark must be conspicuous. This means that the mark must be accessible during normal handling. In the absence of a ruling mandating the mark be in a particular place there is no requirement that the mark be in the most conspicuous place. The following sites are acceptable for country-of-origin marking on footwear.

- one inch from inside top of tongue
- near inside topline

[1] In practice, Customs will not accept marking of shoeboxes and requires that the footwear be marked. The box need not be marked unless it contains misleading references as to origin or will not be opened at point of sale. Both shoes must be marked.

- heel seat
- sole
- arch
- side of tongue if near top.

The mark must disclose the English name of the country of origin. Abbreviations that unmistakably indicate the name of a country, such as Gt. Britain, are acceptable. On the other hand, Gt. Brit. and N.Z. have been held not acceptable.

C. Misleading References. Special rules apply to imported articles that refer to a location other than the country of origin, such as a reference to the address of the United States distributor. Section 134.46 of the Customs Regulations requires that the country of origin appear in close proximity and in letters of at least equal size when the reference "may mislead or deceive the ultimate purchaser as to the actual country of origin of the article."[2]

Section 134.47 of the Customs Regulations sets forth a similar rule for trademarks and trade names that have the same potential. The requirement here is that the country-of-origin mark be in close proximity, or some other conspicuous location. As a practical matter, the rule for symbols and other non-textual statements is the same as for trademarks. Until recently, the somewhat relaxed rule for trademarks was limited to registered marks. Under JBLU, Inc. v. United States, 813 F.3d 1377 (Fed. Cir. 2016), the rule applies to common law trademarks. It is not necessary that the trademark be registered. It is sufficient that an application is pending.

These rules are applied rigorously for footwear. Any reference to a place other than the country or origin, no matter how bland, normally will require an origin mark in close proximity.

D. Sanctions. Failure to observe the country-of-origin marking requirements can lead to one or more of the following sanctions: 1) denial of delivery and/or seizure, 2) marking penalties, and 3) redelivery notices and liquidated damages.

Made in USA

As noted above, imported materials that undergo a substantial transformation in the United States lose their foreign origin. However, that does not mean that the finished article may be marked as "Made in USA".

The Federal Trade Commission ("FTC") has jurisdiction over domestic origin labeling. 16 CFR Part 323 provides that it is an unfair practice to claim US origin unless the final assembly or processing occurs in this country, all significant processing that goes into the product occurs in the US, and all or virtually all the ingredients of are made or sourced in the US.

The regulation provides that it may not be construed as superseding, altering, or affecting any federal statute or regulation relating to origin labeling requirements. Likewise, state statutes are not superseded.

California law is much more restrictive than the FTC regulation. Essentially, California law prohibits the use of "Made in USA" or similar claims when any article, unit, or part of the article has been entirely or substantially made, manufactured, or produced outside of the United States.

[2] The term – “An American Original” - printed on an insole was found to be misleading and the origin statement on the top of the tongue adjacent to the size found not to be in close proximity. HQ H230147 (April 22, 2015).

Content Labelling

Footwear is subject to a number of content labeling requirements at both the federal and state levels. These requirements apply to leather, wool, fur, and faux fur.

A. Leather. The requirements for leather are found in at 16 CFR Part 24, Guides for Select Leather and Imitation Leather Products. The principal elements of the Guides are.

The unqualified term “leather” may be used only for top grain leather. A qualifier must be used for non-top grain leather, such as “split leather”.

When a non-leather material used on the shoe has the appearance of leather, there is an affirmative obligation to disclose that the material is other than leather. This applies to the upper, outer sole, visible lining, and innersole.

There is no disclosure requirement when the visible materials do not have the appearance of leather.

The term “waterproof” may not be used in connection with footwear unless it is impermeable to water and moisture.

The necessary disclosures should appear in the form of a stamping on the footwear, or a tag, label or card attached to the product, affixed until received by the ultimate consumer. The disclosure requirements apply to advertising.

B. Wool. Footwear is subject to 16 CFR Part 300, Rules and Regulations under the Wool Products Labeling Act.

The wool content, regardless of the quantity, must be disclosed in a label, hang tag or marking affixed to the footwear in a secure manner and of such durability that will remain attached to the product through distribution to the ultimate consumer.

Footwear containing wool must have either a house mark registered with the FTC, or an RN number issued by the FTC permanently affixed to the product.

C. Fur. The requirements for labelling footwear with fur components are found at 16 CFR Part 301, Rules and Regulations under Fur Products Labeling Act.

The requirements are that footwear incorporating fur must have a label disclosing the following: 1) the animal name, 2) the country of origin of the fur preceded by the phrase “Fur Origin”, 3) whether the fur is pointed, died, bleached or artificially colored, 4) whether the fur is composed in whole or substantial part (more than 10%) of pieces such as paws, tails, bellies, ears, throat, heads, scraps, or waste fur, 5) whether the fur is used or damaged, and 6) an RN issued by the FTC. These disclosure requirements apply to advertising.

The Dog and Cat Protection Act of 2000, 19 USC § 1308, prohibits the importation of products containing dog or cat fur. This prohibition is enforced by CBP.

The label must be conspicuous, and durable enough to remain on the footwear until it is delivered to the consumer. In addition, the label must be clearly legible, conspicuous, and readily accessible.

D. *Faux* Fur. Some states make an unlawful to import, sell at retail, offer for sale, manufacture articles of clothing, including footwear, which incorporate fake fur without labeling the product “faux fur”. This requirement may be satisfied by a hang tag or sticker, a sewn-in label is not required.

A requirement of this nature is in place in Delaware, Massachusetts, New Jersey, New York, and Wisconsin, and perhaps other states. There is no parallel federal requirement.