

FTC GUIDES FOR LEATHER PRODUCTS

August 2008

The following describes the Federal Trade Commission (“FTC”) Guides for Select Leather and Imitation Leather Products, 16 C.F.R. Part 24, promulgated in 1996. In 2007 the FTC requested public comments on the continuing need for the Guides. After reviewing the comments, the FTC decided to retain the Guides. *73 Federal Register* 34626 (June 28, 2008).

General. The Guides apply to the manufacture, sale, distribution, marketing and advertising of all kinds of leather or simulated leather products including footwear. The general approach of the Guides has not changed. There is no affirmative obligation to identify leather products as leather. What the Guides require is that a product which, in whole or in part, is made of a non-leather material that appears to be leather, disclose that the material is not leather. Thus, the Guides do not require that a leather shoe with a leather upper, rubber and plastic outsole and a textile lining/sock disclose anything about its material content. The Guides come into play when the upper, outsole, or lining/sock are composed of materials which are not leather but which have the appearance of leather.

There are some very important changes in the Guide. Generally, the changes will make it possible to use a single content label for both United States and the European Union.

Leather. The Guides no longer limit the term “leather” to top grain leather. Under the Guides, as modified, split leather is considered leather. The Guides do not, however, define “coated leather” as is the case in the EU. However, a label which describes a material as coated leather for purposes of the EU regulation would certainly satisfy FTC requirements.

The Guides also provide that were the leather product is embossed or otherwise processed, the kind and type of leather should be disclosed. For example, a product made wholly of top grain cowhide that has been embossed to imitate an exotic skin maybe represented as being made of cowhide. It is not sufficient to simply identify the product as leather.

Footwear Parts Covered. The provision regarding concealed innersoles has been deleted. The Guides now state that footwear is composed of three parts: the upper; the lining and sock; and the outsole. The Guides define the upper, the lining and sock and the outsole.

The upper is defined as the “outer face of the structural element which is attached to the outsole”. The lining and sock are the “lining of the upper and the insole, constituting the inside of the footwear article”. The outsole is the “bottom part of the footwear article, subjected to abrasive wear and attached to the upper”. One could quarrel with some of these definitions, but they do not appear to create problems.

Multi-Material Uppers. Where one of the three components contains more than one material, it is sufficient to disclose the presence of non-leather materials provided that the disclosures is made according to the predominance of the materials. Although not stated, we assume that predominance refers to external surface area. The Guides also include the following suggestion as to labelling. In the case of an upper where the majority is composed of man-made material and the balance leather, the following disclosure would be sufficient: “Upper of Man-Made Materials and Leather”.

Composition Leathers. A material contained in footwear which contains ground, pulverized, shredded, reconstituted or bonded leather may not be represented, directly or by implication as being leather. If this material is used and if it has the appearance of leather, it is necessary to disclose that the material is not leather. Further, if the terms “ground leather”, “pulverized leather”, “shredded leather”, “reconstituted leather” (a new term in the Guides) or “bonded leather” are used, a disclosure of the percentage of leather fibers and the percentage of non-leather substances contained in the material must be set forth. For example, footwear with a sock made of a composition material consisting of 60 percent shredded leather fibers may be described as “bonded leather containing 60 percent leather fibers and 40 percent non-leather substances”.

“Waterproof”. The provision concerning the use of the term “waterproof” has been modified to allow the term to be used if a product or material prevents water from contact with its contents under normal conditions of intended use during the anticipated life of the product or material. This is a substantial reduction in the previous standard which limited use of the term “waterproof” to products which are impermeable to water.

Form of Disclosure. The disclosures required under the Guides should appear in the form of a stamp on the product, or a tag, label or card attached to the product. The disclosure should be affixed so as to remain on, or attached to, the footwear until received by the consumer.

Advertising. It is also required that all such disclosures appear in all advertising irrespective of the media, whenever statements, representations, or depictions appearing in such advertising which, absent a disclosure, could create a false impression that the products, or parts thereof, are of a certain composition. Thus, a picture of a shoe or footwear with a plastic or vinyl upper, having the appearance of leather, must contain the disclaimer that the upper is man made materials.

Examples. The following examples are intended to provide a practical explanation of the Guides as they apply to footwear. They are not exhaustive, have not been approved by the FTC, and do not constitute legal advice.

- A. PVC upper, R/P outsole, PVC lining, textile sock. The PVC upper has the appearance of leather.
Label: “All Man Made Materials”
Explanation: Disclosure is necessary because the upper material has the appearance of leather.
- B. Molded R/P boot with fabric lining.

Label: No label required.

Explanation: None of the parts is made with a material which has the appearance of leather.

- C. Fabric upper, lining, and sock, R/P outsole.

Label: No label required.

Explanation: None of the parts is made of material which has the appearance of leather

- D. Upper of split leather, PVC with the appearance of leather, and nylon (leather is the majority), R/P outsole, textile lining and R/P sock.

Label: “Upper Leather with Man-Made Materials/
Balance Man-Made Materials”

Explanation: Split leather is leather. When a component has more than material, one of which is imitation leather, the materials must be listed in order of predominance, presumably based on surface area. The fact that the sock is imitation leather requires the reference to the balance.

- E. Upper of split leather, PVC with the appearance of leather and nylon (PVC is the majority), R/P outsole, fabric lining and sock.

Label: “Upper of Man-Made Material and Leather”.

Explanation: The upper description reflects the fact that the leather is not the majority material. This particular formulation appears in the Guides. No disclosure is required as to the other components because the materials used do not have the appearance of leather.

- F. Jogger with fabric upper and split leather trim, R/P outsole, fabric lining and sock.

Label: None necessary.

Explanation: The Guides limit the disclosure requirement to non-leather materials having the appearance of leather.

- G. Upper, outsole, lining and sock of top grain or split leather.

Label: No label necessary. Footwear could be labeled — “All Leather” or simply “Leather”

Explanation: No disclosure required when there is no non-leather material with the appearance of leather.

- H. Fabric upper, with bonded leather trim, R/P outsole, textile lining and PVC sock.

Label: “Upper Trim and Sock - Man-Made Materials”.

Explanation: Bonded leather is not leather. Its presence, as a non-leather material must be disclosed since it has the appearance of leather. Note that if the upper trim was described as “bonded leather”, the percentage of the leather fibers and the non-leather content would have to be disclosed. The Guides list the following description of a bonded leather consisting of leather fibers and non-leather substances: “Bonded Leather Containing 60% Leather Fibers and 40% Non-leather Substances.”

I. Upper of cowhide split leather, R\P outsole, textile fabric lining and sock. The split leather as been embossed to simulate alligator.

Label: "Upper of Cowhide"

Explanation: Disclosure is necessary because the upper has the appearance of alligator

\2668325.1