Demi Lovato’s hit song “Made in the USA” recounts how her love for her boyfriend is both amazing and patriotic. If they had fallen in love in Paris or Acapulco, however, she may be facing an enforcement action by the FTC or a lawsuit in California under Business & Professions Code 17200 for false advertising.

In 1997, the FTC developed a standard that products advertised as “Made in the USA” must be “all or virtually all” made in the US. All or virtually all significant parts and processing that go into the product must be of US origin. The FDA could also take action on a product under its domain based on misleading claims that misbrand products under the Food Drug & Cosmetic Act.

As we have come to expect, California has a more stringent standard than the FTC. In California, a “Made in the USA” claim is not permitted if the “merchandise or any article, unit, or part thereof has been entirely or substantially made, manufactured, or produced outside the US.”

Enforcement actions by the FTC have included:

1) An OTC analgesic manufactured with foreign made active ingredient;
2) A ratchet wrench with a foreign made cam.

Locks that contained screws and pins made in Taiwan or involved a latch subassembly processed in Mexico was the subject of a private plaintiff 17200 false advertising action in California.

Lovato’s lyric: “no matter how far we go, I want the whole world to know” is relevant as well. Aside from automobiles, textiles, and wool and fur products, good made partially or wholly in the US are not required to be marked “Made in the USA.” US Customs & Border Protection regulations require that all products of foreign origin imported into the US be marked with the name of the foreign country of origin. An exception exists: if an imported good is last substantially transformed in the US, there is no need for a foreign country of origin mark. The substantial transformation does not give the product “Made in the USA” status.

As long as songs are not considered products, Demi appears to be safe. Product manufacturers, however, should take notice of these rules.

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