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NOTE

Labeling Imported Articles With Country of Origin

Importers of foreign articles into the United States are faced with a myriad of customs and Federal Trade Commission regulations before the particular articles can be distributed throughout the United States for further manufacture or for direct sale and consumption. One regulatory area concerns the requirement of labeling imported products with the name of the country of origin. Pertinent to this requirement are not only customs laws and the regulations promulgated by the Federal Trade Commission under its rules against unfair trade practices, but also certain trademark laws embodied in the Lanham Act. As a consequence, the importer bears the heavy burden of compliance with all the existing laws and regulations on marking the country of origin. His task sometimes requires compliance with specific regulations which may be contradictory and mutually incompatible in their application. It is the purpose of this note to survey the legal and regulatory approaches which govern the problem of marking the country of origin.

I. CUSTOMS LAWS AND REGULATIONS

Basic policy considerations underlying customs regulation and marking standards are embodied in Title 19 of the United States Code, section 1304 (1964). Specifically, subsection (a) puts forth the following standard as a guideline for an importer of goods of foreign origin:

Every article of foreign origin . . . imported into the United States shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article . . . will permit in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article.  

From the legislative background of the statute, it appears that Congress employed the language quoted above to accomplish one specific purpose: to protect an “ultimate purchaser” in the United

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States from unwittingly buying goods of foreign origin. The courts have tended to follow this approach and have said that proper marking of goods may provide a basis of selection between available goods of comparable quality of both foreign and domestic origin.

To effectuate its purposes, Congress vested power in the Secretary of the Treasury to promulgate regulations specifying the sufficiency of the labeling on imports in order to prevent deception as to the article's origin. In addition, the Secretary may authorize certain classes of goods to be exempted from the statute. Among those articles excepted from general marking requirements are goods incapable of being marked; goods which cannot be marked without injury prior to importation; goods which cannot be labeled before importation due to prohibitive expense of marking; crude substances; goods to be used by the importer alone and not to be sold; articles intended to be processed or combined by the purchaser such that the marking would be "obliterated, destroyed, or permanently concealed" by such process; goods which by their very nature would indicate their origin without any marking; any article produced at least 20 years prior to its importation into the United States; goods which had been imported in "substantial quantities" without marking during the period from January 1, 1932, to January 1, 1937; and goods inadvertently unmarked at the time of their importation which cannot properly be marked in the United States without prohibitive expense.

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3 1953 U.S. CODE CONG. & AD. NEWS 2283, 2288. See also United States v. Ury, 106 F.2d 28 (2d Cir. 1939).
4 United States v. Ury, 106 F.2d 28 (2d Cir. 1939); United States v. Friedlaender & Co., 27 C.C.P.A. 297 (Cust. 1940); United States v. Gibson-Thomsen Co., 27 C.C.P.A. 267 (Cust. 1940).
5 § 1304(a) (1964).
6 These regulations are collected in 19 C.F.R. § 11.8 (1968).
7 § 1304(a)(1) (1964).
8 Id. § 1304(a)(2) (1964).
9 Id. § 1304(a)(3) (1964).
10 Id. § 1304(a)(A) (1964).
11 Id. § 1304(a)(3)(B) (1964).
12 Id. § 1304(a)(3)(C) (1964).
16 Id. § 1304(a)(3)(H) (1964).
17 Id. § 1304(a)(3)(I) (1964).
19 Id. § 1304(a) (1) (K) (1964).
In order to cope with some of these exceptions, Congress provided that goods normally imported in a container must have an indication of the country of origin on the container.\(^\text{20}\) Again, the intent is to protect the ultimate purchaser of the goods and to assist him in selecting materials for his use.\(^\text{21}\)

Certain sanctions are prescribed to insure compliance with the statute.\(^\text{22}\) These include requiring the importer to mark the country of origin after importation of the product to the United States,\(^\text{23}\) deportation of the goods,\(^\text{24}\) the levying of a 10 percent ad valorem duty assessed at the time of importation,\(^\text{25}\) and retention of the unmarked goods in customs until they are properly marked or the increased duty is paid.\(^\text{26}\)

As noted above, the Secretary of the Treasury has issued explanatory regulations to provide detailed guidelines on marking and labeling.\(^\text{27}\) For example, section 11.8(a)\(^\text{28}\) of the customs regulations provides that the country of origin "shall . . . mean the political entity known as a nation."\(^\text{29}\) This same section requires that the terms "MADE IN," "PRODUCT OF," or other phrases of similar import precede the designation of the country in which the product was manufactured or produced, and that the lettering of these terms be at least comparable in size with the country's name.\(^\text{30}\)

The terminology used would seem to apply only to goods imported

\(^{20}\) Id. § 1304(b) (1964). Presumably, this section was included to deal specifically with the goods excepted from marking under 19 U.S.C. § 1304(a)(3)(D) (1964).

\(^{21}\) Id. See note 3 supra.

\(^{22}\) 19 U.S.C. § 1304(c) (1964) (sanctions not considered to be penal in nature). Criminal provisions are included in subsection (d) and include a fine up to $5,000 and imprisonment of up to one year if an intent to conceal information of country of origin can be shown. But see United States v. Mersky, 361 U.S. 431 (1960), where the Supreme Court did not find a violation of section 1304 in spite of the fact that an intent to conceal the origin of the goods was clearly shown.


\(^{24}\) Id.

\(^{25}\) Id. Such duty is unavoidable and in addition to any other duty imposed by law whether or not the goods themselves are "exempt from the payment of ordinary customs duties."

\(^{26}\) 19 U.S.C. § 1304(d) (1964). This subsection also states that section 1304 does not abrogate "particular requirements of marking provided for in any other provision of law," some of which are more strict and pervasive than section 1304. See, e.g., 19 U.S.C. § 1337 (1964) (unfair practices in the import trade).

\(^{27}\) See note 6 supra. It should be noted that these regulations have the force of law. See United States v. Mersky, 361 U.S. 431 (1960).

\(^{28}\) 19 C.F.R. § 11.8(a) (1968).

\(^{29}\) Id. See United States v. Friedlaender & Co., 27 C.C.P.A. 297 (Cust. 1940) (product made in Czechoslovakia, then under German control).

\(^{30}\) 19 C.F.R. § 11.8(a) (1968).
for resale without subsequent processing, manufacturing, combining, etc. While it has been held that the name of the country of origin must be in legible English, the foregoing requirements are not so stilted that obvious variations in the country name are altogether precluded. The adjectival of the name of an origin country is acceptable as a proper indication of that country, provided the adjectival form is not used in conjunction with other wording so as to refer to a type or species of product. Moreover the spelling of the name of the specific country may vary from the exact English spelling as long as the name is clearly discernible in such varied form. Abbreviations may also be used as long as they clearly and unambiguously indicate the name of the origin country. Whether or not specific variations in marking of the English name of the origin country are to be permitted is noted from time to time in the Treasury decisions.

For purposes of the foregoing statute and regulations, the country of manufacture or production is to be considered the country where the product itself originated. Furthermore, where additional work must be done or material added to the product in another country, the additional work or material must render a substantial transformation of the product in order for the country of the subsequent alteration and modification to be considered the country of origin.

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81 In Denston Felt & Hair Co. v. United States, 27 C.C.P.A. 282 (Cust. 1940), the court found that the marking of an article with the words "Product Of U.S.S.R." on goods imported from the Soviet Union was not in compliance with the statute since the letters "U.S.S.R." were not legible English words. In this case, the imported merchandise consisted of hair packed in bales imported from Russia. The Collector of Customs required the marking "Soviet Russia" in lieu of the marking at the time of importation before releasing the bales from custody. The Collector also assessed the importer the additional 10 percent ad valorem duty. The court held that the marking must be clear and unambiguous and that it must do more than merely "hint" at the country of origin. See also Didia v. United States, 106 F.2d 918 (D.C. Cir. 1939); Conner v. United States, 28 C.C.P.A. 185 (Cust. 1941).

82 19 C.F.R. § 11.8(b) (1968), allowing, as an example, the term "English" per se as sufficient to show the country of origin.

83 19 C.F.R. § 11.8(b) (1968), noting that "English Shoes" or "French Pastry" are unacceptable for the purposes intended by the section.

84 Id. It is stated that "Brasil" may be substituted for "Brazil" or "Italie" for "Italy." Compare American Burtonizing Co. v. United States, 13 Ct. Cust. App. 652 (1926) (use of French terms to mark the origin of the goods held insufficient).

85 19 C.F.R. § 11.8(b) (1968), noting that "Gr. Britain" would be a plausible substitute for "Great Britain."

86 19 C.F.R. § 11.8(b) (1968).

87 19 C.F.R. § 11.8(c) (1968). See also text accompanying note 29 supra.

88 Id. See also United States v. Strauss Import Corp., 27 C.C.P.A. 274 (Cust. 1941).
The Secretary of the Treasury has specified certain goods which must be marked unambiguously by one of several methods to insure protection for the "ultimate purchaser." Other classes of goods not further specified by the Secretary may be designated by "any method of legible and conspicuous marking." In those cases in which an imported product is to be converted or altered in the United States, there is a minimization of the marking requirement as to the persons who must be notified of the product's origin. Those persons who must be informed are the "ultimate purchasers" as defined by the Secretary. Generally stated, an ultimate purchaser may be defined as "the last person in the United States who will receive the article in the form in which it was imported." Thus, in the case of United States v. Gibson-Thomsen Co. it was held that where an imported article is to be used in the United States in the manufacture of a product having a character and use differing from that of the imported article, the country of origin marking need only be made to notify the manufacturer or processor. According to this principle, the manufacturer or processor in the United States who converts or combines the imported article will be considered the ultimate purchaser of that article for the purposes of section 1304. The finished product, therefore, will not have to bear any mark of foreign origin. The Gibson-Thomsen rule, then, is substantially the same as that contained in the customs regulations. However, it is difficult to generalize from this definition to accommodate all situations.

39 19 C.F.R. § 11.8(d) (1968), listing as examples: "Knives, clippers, shears, safety razors, surgical instruments, etc."
40 Id. The regulation specifies "die-stamping, cast-in-the-mold lettering, etching (acid or electrolytic), engraving, by means of metal plates" as acceptable means of marking.
41 19 C.F.R. § 11.8(d) (1968).
42 19 C.F.R. § 11.8(e) (1968).
43 19 C.F.R. § 11.8(e) n.6(a) (1968).
45 Id.
46 19 C.F.R. § 11.8(e) n.6(a) (1968). United States v. Gibson-Thomsen Co., 27 C.C.P.A. 267 ( Cust. 1940), where the particular imported product, bases for toothbrushes, was to be utilized in the United States in the fabrication and assembly of a product having a name, character, and use differing from that of the imported article. The word "Japan" was die sunk on each of the toothbrush handles, but the mark became obscured when bristles were inserted. The court held that the manufacturer in this case was the "ultimate purchaser" of the handles since their original identity was lost in processing, and that the handles were indelible and permanently marked in a conspicuous place at the time of importation in compliance with section 1304.
47 Id.
48 19 C.F.R. § 11.8(e) n.6(a) (1968). See note 43 supra.
Clearly, in most cases a manufacturer would be considered the ultimate purchaser; this is particularly true where he converts or combines the imported product into a product of a substantially different character. When the processing or combination does not result in a substantial transformation and the change in the character of the product is slight, a subsequent buyer becomes the ultimate purchaser and origin markings must be made to notify him. In addition, any products imported for sale at retail must be clearly marked so that the purchaser can easily discern the true origin.

Despite interpretations of the statute by both the Secretary of the Treasury and the courts, some very difficult problems remain. For example, it is still very difficult to ascertain how a given court will interpret restrictions. This is especially true when subtle distinctions must be drawn, as in the cases of United States v. Strauss Import Co. and United States v. Wolfson. The Wolfson decision involved tubular steel bends that were not individually marked, but the burlap wrapping in which they were shipped was marked with a label "Made in Scotland." The court held this insufficient to comply with the labeling requirements since, to comply fully with the statute, notification would have to reach substantially all of the ultimate purchasers — not just some of them. Whether or not this decision follows the Gibson-Thomsen ultimate purchaser test is somewhat unclear, although it is true that some of the tubing was to be sold as retail merchandise.

49 Id.
50 Id.
51 See United States v. Strauss Import Co., 27 C.C.P.A. 274 (Cust. 1941), the court found that steel clothes fasteners marked "Japan" at the time of their importation had become integrated into the clothes product thus losing their identity, and the marking was sufficient even though the word "Japan" had been obscured in the processing.
52 Id. See note 49 supra.
54 Id. It is rather difficult to tell whether this should be considered a more liberal or a more stringent reading of the labeling restrictions. This query becomes even more abject when the contrary case of Diamond Match Co. v. United States, 49 C.C.P.A. 52 (Cust. 1962), is considered. There, under basically similar circumstances, the court held that a marking band holding bundles of unmarked wooden spatulas together was clearly a sufficient indication of national origin even though the spatulas were resold, sometimes without any alteration in identity, individually to separate purchasers. The case seemed to turn on the fact that the bundles would not be broken before being incorporated in another product by some manufacturer.
55 A recent decision in this area which is factually similar to United States v. Wolfson, 52 C.C.P.A. 46 (Cust. 1965), should be noted. In Treas. Dec. 68-57, 33 Fed. Reg. 3193 (1968), unfinished welding fittings and flanges were imported unmarked and submitted to a finishing process including cleaning, painting, threading the bore, and drilling bolt holes. The Bureau of Customs here followed Gibson-Thomsen's "ulti-
In spite of the disparity among decisions construing section 1304, it appears that the vital issue in virtually every situation is the identity of the ultimate purchaser. The primary test is the *Gibson-Thomsen* doctrine. There are various factors which help determine whether the importer-manufacturer or the consumer is the ultimate purchaser: the nature of the imported product, its labeling at the time of importation, and the processes employed after its importation. A careful consideration of these factors will enable one to distinguish whether a new and different product with a new name, character, and use has been developed.

II. **FEDERAL TRADE COMMISSION REGULATIONS**

The authority of the Federal Trade Commission (FTC) to police unfair and deceptive trade practices, including origin marking requirements, is found in the Federal Trade Commission Act. The authority and jurisdiction of the FTC are independent of the customs regulations. Consequently the FTC may act notwithstanding prior decisions concerning the same subject matter under the customs provisions. The FTC acts under a general statute empowering it to regulate goods entering interstate commerce, while the customs statute is of more limited scope. Thus, even though the Tariff Act is intended to protect the ultimate purchaser, this does not undermine the jurisdiction of the FTC to police unfair trade practices to protect all types of purchasers.

The general grant of authority to the FTC is difficult to define with precision. The task is further complicated by the myriad of products which come under this authority. As general rules are difficult to promulgate, the FTC has recently announced that it would deal with the problem on an ad hoc basis. In the following discussions, then, general analysis of the affirmative require-
ments for origin marking, and of deceptive and misleading practices of origin labeling can best be undertaken on a case by case basis.

The catalyst for FTC action is a "public interest" test. The test involves a balancing of the public preference for goods of domestic origin against preference for items of foreign manufacture. This rationale was utilized in the case of Baldwin Bracelet Corp. v. FTC, where the court required affirmative disclosure of foreign origin as being necessary to prevent unfair competition with domestic manufacturers where a preference for domestic goods was discernible.

Certain exceptions to the affirmative requirement to disclose foreign origin demonstrate the application of the public interest test. No disclosure is necessary where a product is not produced domestically since there is no competitive position to protect, nor comparison to be made. If because of a price differential there is no discernible preference for a domestic product over a foreign product, or if the desire for foreign-made articles is greater than for those of domestic origin, disclosure is not required. However, the burden of proof is on the seller to show that there is no public preference for the domestic goods.

The authority of the FTC reaches not only the unfair results of non-disclosure, but also the use of misleading designations of origin by either domestic or foreign producers. Certainly, where a product is blatantly advertised as the product of a country other than that of its true origin, the FTC has no trouble in finding the practice deceptive. However, subtle methods have been utilized. The term "Havana Cigars" when applied to a domestic product is improper and deceptive. Similarly, the use of Chinese symbols and the phrase "Designed by English bootmakers" were prohibited, absent further prominent designation of true origin. All of these

65 See Fioret Sales Co. v. F.T.C., 100 F.2d 358, 359 (2d Cir. 1938).
66 See Establissements Rigand, Inc. v. F.T.C., 125 F.2d 590, 591 (2d Cir. 1942).
67 Baldwin Bracelet Corp. v. F.T.C., 325 F.2d 1012 (D.C. Cir. 1963).
68 Id. at 1014.
69 For a full discussion, see 2 TRADE REG. REP. ¶ 7551.
70 Id.
71 Id.
72 See E. Griffiths Hughes, Inc. v. F.T.C., 77 F.2d 886, (2d Cir.), cert. denied, 296 U.S. 617 (1935).
73 In re Isadore H. Lukacher, 29 F.T.C. 490, 500-503 (1939).
75 Stipulation 3091, 32 F.T.C. 1710 (1941).
decisions of the FTC presuppose a general preference for the imported product.\textsuperscript{70}

It appears that substance and not form controls the designation of a product as \textit{foreign}. A product is not considered "foreign-made" because a foreign formula is used when a domestic corporation does the manufacturing.\textsuperscript{77} Also, manufacture by a domestic subsidiary of a foreign corporation\textsuperscript{78} or the supervision of production by foreign directors and shareholders\textsuperscript{79} do not qualify for other than a domestic label. Presumably, when the general approach of the FTC revolves around the broad preference scale, there are devices and techniques that face blanket prohibition regardless of the impression of origin sought to be presented. For example, Japanese china represented as "Dubarry Porcelain," to convey the impression of French origin, failed to disclose true origin regardless of the proper use of the "imported" designation.\textsuperscript{80}

Other case law elucidates the FTC approach to labeling with country of origin. In \textit{Harsam Distributors Inc. v. FTC}\textsuperscript{81} a manufacturer of perfume who combined French essence with domestic alcohol was denied the label of French perfume. Here the concern was for "the protection of the public, not experts" because it was standard industry practice to label the product as imported.\textsuperscript{82} The label "Australian Wool" was considered misleading in \textit{Federal Trade Commission v. Winsted Hosiery Co.},\textsuperscript{83} because the product was not wholly composed of Australian wool.\textsuperscript{84} It is apparent that the scope of FTC authority encompasses accuracy in disclosure as well as the requirement of affirmative disclosure to prevent unfair and deceptive practices.

Another problem area is the combining of a foreign component or components with domestic components. Here the question concerns not only the duty to label a product as being of foreign origin, but also the right to represent a product as being "Made in U.S.A." Again the public interest test is pertinent. However, in one case

\textsuperscript{70} See Fioret Sales Co. v. F.T.C., 100 F.2d 358, 359 (2d Cir. 1938).
\textsuperscript{77} La Sasine International, Inc., 14 F.T.C. 353 (1931).
\textsuperscript{78} See Yardley of London, Inc., 30 F.T.C. 156, 157 (1939). See also \textit{In re Philip Morris & Co.}, 32 F.T.C. 278 (1940).
\textsuperscript{79} See Establissements Rigand, Inc. v. F.T.C., 125 F.2d 591 (2d Cir. 1942).
\textsuperscript{80} Edward P. Paul & Co. v. F.T.C., 169 F.2d 294 (D.C. Cir. 1948).
\textsuperscript{81} 263 F.2d 396 (2d Cir. 1959).
\textsuperscript{82} \textit{Id.} at 398.
\textsuperscript{83} 388 U.S. 483 (1922).
\textsuperscript{84} \textit{Id.}
the use of imported needles in an otherwise domestically manufactured phonograph did not require disclosure.\textsuperscript{85} Nor was the fact that imported glass beads formed the cores of domestically produced pearl necklaces required to be revealed to the consumer.\textsuperscript{86} From these cases a test much like that previously discussed concerning \textit{Gibson-Thomsen} seems to emerge,\textsuperscript{87} namely, when a component is significantly altered or is not a substantial component of the final product, no disclosure is required.

On the other hand, the absence of the requirement for affirmative disclosure does not appear to be license to represent the product as "Made in U.S.A." Recently, the FTC has approached such a designation as an affirmative representation that the product was made entirely in the United States.\textsuperscript{88} "Assembled in U.S.A." or something similar which discloses the presence of foreign component parts is permitted.\textsuperscript{89} Compiling a body of specific rules and conclusions on origin labeling is not a straightforward task. There are acts of omission and acts of commission, and lying between these are a multitude of fact situations which do not easily lend themselves to solution within the framework of the present laws. However, it may be helpful to present a brief summary of those laws and decisions which have been discussed.

As has been stated, FTC jurisdiction is independent of the customs laws. The approach taken by the FTC toward origin marking is based on the concept of preventing unfair and deceptive trade practices. These practices are examined in the light of the public interest or preference test. Generally, a product manufactured totally abroad must be designated with its country of origin. If two or more foreign countries participate, then the name of the country supplying the most substantial contribution should appear. If the countries contribute equally, then all names should appear. It is deceptive to label a domestic product as imported, or an imported one as domestic. In addition, a marking which creates an inference of improper origin through a lack of proper explanation, is deceptive and therefore prohibited. The designation "Made in U.S.A." is reserved for products exclusively of domestic origin, al-

\textsuperscript{85} 2 TRADE REG. REP. § 7551.12; see Waltham Watch Co. v. F.T.C., 318 F.2d 28 (7th Cir. 1963).
\textsuperscript{86} L. Heller & Son, Inc. v. F.T.C., 191 F.2d 954 (7th Cir. 1951).
\textsuperscript{87} See text accompanying notes 44-49 supra.
\textsuperscript{89} Id.
though goods of mixed foreign and domestic components may use the "Assembled in U.S.A." designation. When such mixed products are manufactured, there seems to be no requirement to disclose the origin of components if such components are not a substantial part of the final product or lose their original identity in the manufacturing process.

III. TRADEMARK LAW

The function of a trademark is to indicate the origin of a product. However, geographical designations are generally not the proper subject matter for a trademark. Therefore, in the trademark area origin marking is quite a different thing from the customs regulations and unfair trade practices areas previously discussed. A particular product could be manufactured in any country and properly bear the same trademark. Certain products may become associated with specific countries and geographical areas. The hood ornaments of the Rolls Royce and Mercedes Benz are examples of marks which are quickly associated with England and West Germany, respectively. For this reason, one could easily deceive a purchaser as to the country of origin of a product by the manipulation of a trademark.

Because of the unfair competitive advantages which may be gained through the use of a deceptive trademark, the Lanham Act or Trademark Act of 1946 was promulgated. Two sections apply specifically to problems related to foreign goods entering this country. Section 42 provides in part that:

[N]o article of imported merchandise which shall . . . bear a name or mark calculated to induce the public to believe that the article is manufactured in the United States, or that it is manufactured in any foreign country or locality other than the country or locality in which it is in fact manufactured shall be admitted to entry at any custom house in the United States . . . .

Section 43(a) provides that:

[A]ny person who shall affix, apply, annex, or use in connection with any goods or services, or any container or containers for

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goods, a false designation of origin, or any false description or representation, including words or other symbols tending falsely to describe or represent the same, and shall cause such goods or services to enter into commerce . . . shall be liable to a civil action by any person doing business in the locality falsely indicated as that of the origin or in the region in which said locality is situated, or by any person who believes that he is or is likely to be damaged by the use of any such false description or representation.\(^94\)

Section 43(b) prohibits the importation of goods into the United States bearing misrepresentative marks.\(^95\)

The sections which forbid any false designation of origin and false descriptions have created a new federal statutory tort sui generis and are not considered to be a mere codification of existing common law principles of unfair competition.\(^96\) These sections have been held to apply exclusively to false descriptions or representations which are of substantially the same economic importance as those involving infringement or other improper trademark usages.\(^97\) It was not the intention of the drafters of the statute to create windfalls, but rather to promote fair and honest competitive dealing.\(^98\)

However, there is a close relationship between customs law and the Lanham Act. According to section 11.14 of the customs regulations,\(^99\) the importation of merchandise of foreign or domestic manufacture is prohibited if such merchandise bears a mark or name which copies or substantially duplicates a trademark or trade name recorded in the Treasury Department under provisions of the Lanham Act. An exception is made for merchandise which is imported by, or for the account of, or with the written consent of, the owner of the protected trademark or trade name.\(^100\)

The essence of any proceeding brought under section 43 of the Lanham Act is false description, or representation, or use of a particular trademark which is likely to cause confusion to the average purchaser.\(^101\) While most cases under section 43 have been di-

\(^{100}\) Id.
\(^{101}\) Société Comptoir De L'Industrie Coronniere Establissements Boussac v. Alexander's Dept. Stores, Inc., 299 F.2d 33 (2d Cir. 1962). However, it is not harm to the purchaser which is of paramount importance, but rather harm to competitors.
rected at attempts to "pass off" one's product as that of another by improper trademark usage, there can be cases where the problem is directly concerned with geographical origin. Such problems arise out of situations like that in Mutation Mink Breeders Ass'n v. Lou Nierenberg Corp., where the furs bore the trademark of "Canadian Fur Corporation" but were not in fact from Canada.

Although the Lanham Act is not the only statute relating to labeling in the form of trademarks, it is a warning that an importer must be as careful in the marks which indicate the identity of the producer as with those which indicate the product's country of origin.

IV. MISCELLANEOUS LAWS WHICH IMPOSE SPECIFIC REQUIREMENTS FOR LABELING COUNTRY OF ORIGIN

There are certain other statutes in addition to those already discussed which contain requirements pertinent to labeling for country of origin. These statutes apply to particular types of goods such as foods and drugs, textiles, and furs. The Federal Food, Drug, and Cosmetic Act contains provisions setting forth requirements for branding and labeling packages containing foodstuffs, drugs, and related products. The Act specifically provides that all packages containing food must be marked with the name and place of business of the manufacturer, packer, or distributor. If such marks are not present, the food packages will be deemed mislabeled.

The Textile Fiber Products Identification Act, which is administered by the Federal Trade Commission, provides that in the case of imported textile products covered under the Act the name of the country where the product was processed or manufactured

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103 See Mutation Mink Breeders Ass'n v. Lou Nierenberg Corp. 23 F.R.D. 155 (1959).
106 Id.
107 Id.
shall appear on or be affixed to the product in some manner. If the required information is not appended to the product as required, it is considered mislabeled and constitutes an unfair method of competition. Moreover, all such imported textile products which are not properly labeled may be excluded from importation.

The Fur Products Labeling Act provides that a fur product is considered misbranded if there is no label affixed to the product showing, in addition to other required information, the country of origin of the fur product. Thus, passing off domestic furs as imported furs has been held to be an unfair trade practice; similarly, passing off imported furs as domestic furs has been prohibited. An importer found to be in violation of this Act can be prohibited from importing into the United States, except upon payment of a bond for double the value of the products being imported.

V. STATUTORY RECOMMENDATION FOR CHANGE

It is an elusive task to draw definitive guidelines for an importer's course of action. This conclusion is supported by the large number of FTC advisory opinions sought by manufacturers and importers over the past few years. Such a case by case approach is undesirable from the point of view of the individual interests involved.

One recommendation might be that the Lanham Act be amended to include a statutory provision encompassing all the pertinent country of origin marking rules, opinions, and regulations, in order to provide a concise and straightforward codification in this problem area. Any such statutory amendment should leave intact the present

109 15 U.S.C. § 70(b) (1964). In a recent advisory opinion the Federal Trade Commission stated, citing the Textile Fiber Products Identification Act, that disclosure of foreign origin is required where clothing apparel was assembled and sewn in a foreign country, even though its components, including fabrics, buttons, and trimmings were of domestic origin. Advisory Op. Dig. No. 206, 3 TRADE REG. REP. 18273 (F.T.C. April 4, 1968).


114 See 16 C.F.R. 301.18 (1968).

115 F.T.C. Complaints No. 7884, 3 TRADE REG. REP. at 24620; F.T.C. Complaints No. 8404, 3 TRADE REG. REP. at 24655.

The proposed amendment could read as follows:

A. Any product manufactured, assembled, constructed, or otherwise fabricated within the United States, its possessions, or territories, and which is comprised in whole or in part of components or materials manufactured outside the United States, its territories, or possessions, shall not be labeled or in any way marked thereon with any wording or any other indication which would in any way represent to a purchaser of that product that it was manufactured wholly in the United States, its territories, or possessions. The foregoing marking restrictions shall also apply to any container, package, or covering in which such product is inserted for sale, delivery, or storage purposes.

B. Notwithstanding the foregoing provisions, if a product is assembled, constructed, or fabricated within the United States, its territories or possessions, utilizing in part foreign components or materials, such product may be labeled or marked with wording to indicate that it was assembled, constructed, or fabricated in the United States providing that, in language equally conspicuous, it is also indicated that such product is assembled, fabricated, or constructed with components of specifically designated origin.

C. Any product which is manufactured, fabricated, constructed, or assembled in the United States utilizing in part or in whole components, materials, services, or labor which originate outside the United States or its territories or possessions, where the cost value of such components, materials, services, or labor incorporated therein exceeds 40 percent of the final cost value of the product, shall be labeled in a clear and conspicuous manner on the external surface thereof showing the country of origin of each such component, part, or materials, or designating the percentage of foreign-origin goods, whichever is most economically feasible, as well as indicating any specific foreign labor content. The foregoing provisions shall apply irrespective of whether any foreign component loses its identity in the final product or whether the foreign component be not discernible from any exterior portion of the final product.

D. Any product which is assembled, manufactured, constructed, or fabricated within the United States, shall not be marked or labeled in any manner to represent that the product is made outside the United States.
E. Nothing in the foregoing statutory provisions shall be con-
strued to supersede or repeal any provisions of Title 19 relative to
customs laws, any provisions of Title 15 relative to trademark us-
age, or any other provisions of the United States Code.

This amendment should be added to Title 15 of the United
States Code to follow section 1125 and be denoted as 15 U.S.C.
1125(a).

The recommended amendment is centered mainly upon the var-
ious rules and opinions promulgated by the FTC under the ban-
nor of unfair trade practice concepts. The authors believe that this
area has been plagued by great confusion; for this reason, the fore-
going recommendations warrant due consideration.

GRR*/DJR/RAS

* This Note is based on a paper submitted for Professor F.L. Hartman’s International Business Transactions course at CWRU Law School by George R. Royer. Mr. Royer (B.S., College of William and Mary; M.S., Rensselaer Polytechnic Institute; J.D., University of Toledo) is a graduate student at CWRU Law School and an L.L.M. candidate.