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## Shinola case begs question: What is 'American made'?

By **DUSTIN WALSH**



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Photo by File photo

Shinola agreed to stop using the slogan "Where American Is Made" to appease Federal Trade Commission regulators.



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What does it mean to be made in America?

It's a sweeping assertion of national pride, implying the notion of high-quality products manufactured by U.S. citizens. But it's also not easy to define.

Last week, the federal government settled with **Bedrock Manufacturing Co. LLC**, and its Shinola brand, over the advertising slogan of "Where American Is Made" and the label on its watches "Built in Detroit."

Both seem innocuous statements about the watchmaker's use of local employees, yet the government called into question Shinola's use of foreign parts.

Experts say the use of the voluntary slogan, and iterations, present a minefield for businesses looking to market their products to a consumer base keen on buying American goods.

The **U.S. Federal Trade Commission** said Shinola's claims overstated the extent to which its products are made or built in the U.S., according to a letter it sent to Bedrock late last week.

Ultimately Bedrock, which does business as **Shinola/Detroit LLC** and **C.C. Filson Co.**, acquiesced to the feds by agreeing to end the ad campaign this past January and altered its labeling to avoid deceiving customers. But interpreting the rules has been an exercise in frustration, said Bridget Russo, Shinola's chief marketing officer, and highlights the need for an updated edict by the FTC.

"We thought we understood the rules and were doing the right thing," Russo said. "On the one side, we're happy this happened because we never set out to deceive anyone. We came here to create jobs. But at the same time, the rules depend on context and are up for interpretation, and we could all use some clarity."

Its employees assemble watches in Detroit from parts imported from Switzerland and Thailand — which is what drew the attention of the FTC.

Paul Laurenza, partner at Detroit-based law firm **Dykema Gossett PLLC** in Washington, D.C., said the FTC rules are relatively straightforward, despite the prevalence of the "Made in America" and other similar claims by manufacturers.

"The percentage of enforcement is probably just a small percentage of the violations," Laurenza said. "I think, in part, it's fueled by a misunderstanding of just how strict the standards are. ..."

Under FTC rules, a product must be "all or virtually all" produced in the U.S. to use the claim "Made in America" or similar claims on its packaging or advertising.

For example, a wrench manufactured in the U.S. from Korean steel can't be deemed Made in America because the bulk of the actual product, the steel, comes from overseas. But a



The FTC overhauled the rules governing "Made in America" labeling and advertising in 1997 following a two-year legal battle with Boston-based **New Balance Athletic Shoe Inc.** New Balance had been labeling its shoes as "Made in the USA" even though many of its shoes were made abroad. The shoemaker contended that 70 percent of its shoes were made in the U.S., so it qualified to make the claim.

The battle ended with a consent decree, where New Balance agreed not to use the labeling on shoes that were wholly made elsewhere, according to a 2010 report by **NBC News**. Since the case, New Balance continues to label its shoes as American made if they contain 70 percent locally made content — which has appeased the FTC in this case.

"The cases are very fact-specific, and it's not just about percentages," Laurenza said. "It's about how important the component is to the product. The foreign component, if it's a part that's considered critical to the product, that's not eligible for the claim."

For Shinola, 100 percent of the watch components are assembled from foreign parts, according to the FTC. Using the slogan "Built in Detroit" is a violation under its rules, the FTC said.

"We were behind the word 'built' and 'build' because we thought it meant 'assembled' and best represented what we were doing," Russo said. "We didn't put 'American Made,' and we've always been very transparent on our website."

There are workarounds, Laurenza said, and Shinola is now employing them. Shinola's watches now read "Built in Detroit with Swiss and Imported Parts."

Laurenza said he advises most clients to use a qualifying claim, like Shinola now uses.

"It's so difficult to meet the 'Made in America' claim, it's not worth the hassle since it's so easy to use qualifying language," Laurenza said. "Quite frankly, there's so many parts coming from overseas nowadays, most companies don't have the option, so look for acceptable language. After all, you don't have to use it at all. It's a voluntary claim."

But Shinola founder Tom Kartsotis, in a statement, said the FTC rules are uneven and unfair.

"What is left unsaid here is that the regulations governing the 'Made in the USA' standards create somewhat subjective policies and standards that hinder the ability of any given company to communicate effectively to the consumer the overall effort and scope of what they are manufacturing in America in order to separate themselves from the majority of companies that completely import their products," he said in a statement.

"We found it confusing that a car, for example, isn't held to the same standard as a watch. The inconsistency of the policies and laws, as well as the subjective nature of some of the process, renders it difficult to navigate as a U.S. company and compete against other



Cars are governed under a different set of labeling rules overseen by the **National Highway Traffic Safety Administration**. Passenger vehicles manufactured after Oct. 1, 1994, must display a label informing the customer of where it was assembled, the percentage of parts made in the U.S. and Canada, and where the engine and transmission were manufactured.

Textile and wool products are also governed under a different set of rules, which must display the fiber content, the country of origin and the identity of the manufacturer.

All assembled imported products must display country of origin, i.e. Made in China, and are governed by **U.S. Customs and Border Protection**.

Russo said the FTC should realign its guidance to create uniformity, much like the **Food & Drug Administration** did with food labeling. "If it's confusing to us, it's confusing for the consumer," Russo said. "Let's create a level playing field, one that's consistent."

For the consumer, however, the rules applying to "Made in America" is likely moot, said Jake Grove, partner at Royal Oak-based **Howard & Howard Attorneys PLLC**.

"There's the issue of whether (the claim) creates confusion in the marketplace, but the other issue is whether the consumer really cares," Grove said. "I own a Shinola watch. I'm aware of Shinola's claim. I knew the parts came from elsewhere and was vaguely aware they did the assembly in Detroit, and that was enough for me."

Said Russo: "Maybe it does matter to a small percentage; maybe there are people that want a product where every part is sourced in the U.S. no matter how difficult that is. But it doesn't negate the fact that we've created jobs in Detroit, and anyone that has bought our watch, they have the added benefit of knowing that's what we've done."

*Correction: A previous version incorrectly spelled the last name of Jake Grove. Current version is correct.*

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