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To : Mr. Matthew Carmel

By email only

ATTORNEY CLIENT CONFIDENTIAL

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RE: MADE IN THE USA –CLAIM for PALM PISTOL®

Dear Mr. Carmel;

You have asked us to provide you an opinion whether your product Palm Pistol® qualifies for ‘Made in The USA’-claim.

There is no law that requires most products sold in the United States to be marked or labeled “Made in the USA” or have any disclosure about the amount of their domestic content. However, specific laws and regulations apply to disclosing US origin of textiles, furs, wool and automobiles. Therefore, firearms, such as Palm Pistol ® are not required to have any label or disclosure of origin, specifically of being made in the USA.

However, making a “Made in the USA” claim has to comply with the Enforcement Policy Statement on U.S. Origin Claims issued by the Federal Trade Commission on December 1, 1997. The Commission’s authority to regulate U.S. origin claims derives from Section 5 of Federal Trade Commission Act (FTC Act), 15 U.S. C. section 45, which prohibits “unfair and deceptive acts or practices”. It is important to note that a claim may be express or implied. Implied claims are context-dependent, but U.S. symbols such as U.S. flags may amount to an implied claim.

The Commission will find an advertisement or label deceptive under Section 5, and therefore unlawful, if it contains a representation or omission of fact that is likely to mislead consumers acting reasonably under the circumstances, and that representation or omission is material. It is deceptive to make a claim unless, at the time the claim is made, the manufacturer or marketer possesses and relies upon a reasonable basis substantiating the claim. Therefore, Made in USA claim must be truthful and substantiated.

Under the FTC Policy Statement, the Made in USA claim may be non-qualified or qualified.

A non-qualified claim would in essence read “Made in USA”. The standard provided by the Federal Trade Commission for non-qualified claims is “all or virtually all” standard, meaning that all significant parts and processing that go into the product must be of U.S. origin. The term United States, as referred to in the Enforcement Policy Statement, includes the 50 states, the District of Columbia, and the U.S. territories and possessions.

A qualified claim would be a claim that describes the extent, amount or type of a product’s domestic content or processing, but indicates that the product is not entirely of domestic origin.

Does Palm Pistol qualify for a non-qualified Made in the USA claim?

A non-qualified Made in USA claim in connection with Palm Pistol ® is appropriate if all or virtually all parts and processing that go into the pistol are of U.S. origin.

The FTC-statement does not give any firm numbers or percentages that are to be met before a non-qualified claim can be made. As a demonstration, the FTC offers two sample unqualified US-origin claims, one deceptive and the other not:

Example: A company produces propane barbecue grills at a plant in Nevada. The product's major components include the gas valve, burner and aluminum housing, each of which is made in the U.S. The grill's knobs and tubing are imported from Mexico. An unqualified Made in USA claim is not likely to be deceptive because the knobs and tubing make up a negligible portion of the product's total manufacturing costs and are insignificant parts of the final product.

Example: A table lamp is assembled in the U.S. from American-made brass, an American-made Tiffany-style lampshade, and an imported base. The base accounts for a small percent of the total cost of making the lamp. An unqualified Made in USA claim is deceptive for two reasons: The base is not far enough removed in the manufacturing process from the finished product to be of little consequence and it is a significant part of the final product.

While there is no bright line to establish when a product is or is not "all or virtually all" made in the United States, the Commission will look the following factors in its determination of the truthfulness of the claim:

- a) Where is the final assembly or processing of the product conducted
- b) Portion of product's total manufacturing costs that are attributable to U.S. parts and processing
- c) How far removed from the finished product any foreign content is.

a. Where is the final assembly or processing of Palm Pistol® guns conducted?

The minimum requirement for a Made in USA claim is that the final assembly or processing of the product must take place in the United States.

All the individual components of Palm Pistol® guns are assembled and packaged by Constitution Arms in Maplewood, NJ. Thus the requirement of the final assembly or processing taking place in the United States is clearly fulfilled.

b. Portion of Palm Pistol's® total manufacturing costs that are attributable to the U.S. parts and processing

The major parts of the pistol include a stock or a frame, a barrel, a latch, a receiver, two grip safeties, and two trigger bars. In addition to these major parts the pistol comprises a number of fasteners.

Constitution Arms buys all the components of the pistol from US manufacturers. The major parts are manufactured in the United States according to descriptions provided by Constitution Arms. For all standard parts, such as fasteners, screws etc. Constitution Arms has product listings from the providers stating the country of origin for each item being the United States. Country of origin means the country where the last substantial transformation took place (definition adopted from the US Customs and Border Protection:

<http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5080353>).

Accordingly, all the major parts of the pistol as well as all the fasteners are transformed to their final form in the United States and therefore a significant enough portion of the total manufacturing costs are attributable to the U.S. parts and processing. A “Made in USA” claim is not likely to be deceptive because all manufacturing costs which concern transforming the components to their final form are attributable to the United States.

c. How far removed from the finished product is any foreign content?

Foreign content incorporated early in the manufacturing process often will be less significant to the consumer than content that is a direct part of the finished product or the parts or components produced by the immediate supplier. When considering the foreign raw materials the same questions are pertinent: How much of the product's cost do the raw materials make up

and how far removed from the finished product are they? Have the raw materials been substantially transformed?

The raw materials of the Palm Pistol® include plastics and metals. None of the materials are directly imported, but individual materials of the composites may originate to some extent from outside the United States. For plastic materials, it is practically impossible to trace back where the oil comes for the final plastic composite. However, most of the materials used in Palm Pistol® including plastic and metal parts are manufactured and melted in the United States. Even minor parts that include material melted outside the U.S.A (e.g. short sear pin) are manufactured in the U.S.A. All major parts material, such as pre-rifled round barrel stock, are made of material melted and manufactured in the U.S.A.

In conclusion, none of the raw materials should be of concern. Mostly all raw materials can be tracked to be U.S. origin. Any foreign materials are merely raw materials of the metal alloys or the plastic, and thus relatively far removed from the final product. The last substantial transformation of each raw material took place in the United States and therefore it is unlikely that Made in USA –claim could be seen as deceptive.

Conclusion

When a manufacturer or marketer makes an unqualified claim that the product is made in USA, it should have and rely on a reasonable basis to support the claim at the time it was made. In the case of Palm Pistol® the support to an unqualified claim contains:

- evidence of the final product being assembled fully by Constitution Arms, a New Jersey registered corporation fully owned by US citizens
- evidence from the part suppliers of all the parts being of US origin, which means that the final transformation of the parts has taken place in the United States
- DFARS (Defense Federal Acquisition Regulation Supplement) –conformance certificates from each supplier of metal parts showing majority of the raw materials coming from the United States or alternatively from one of the DFAR-countries.

Accordingly, it would be reasonable to support the claim with the current composition of the Palm Pistol® gun.

Respectfully;

/Richard Gearhart/

Richard Gearhart, Esq.

Gearhart Law LLC