

UGGH... BOOTED OVER FALSE "AUSTRALIAN MADE" REPRESENTATIONS

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Ozwear Connection (Ozwear) has been issued with two infringement notices and been slapped with \$25,200 in penalties by the Australian Competition and Consumer Commission (ACCC) for misleading consumers by making false country of origin representations about their "Classic Ugg" footwear.

Ozwear made false representations on their website that their Classic Ugg footwear was made in Australia, including by stating that Ozwear is "100% Aussie owned" and poured on the Australiana by stating that Classic Uggs were made using the "best materials available in Australia", along with using a map of Australia in green and gold colouring as a tag. The tag also included the words "this exclusive premium label is uniquely Australian owned brand for authentic Australian Ugg Boots" [sic]. Although Ozwear may have used Australian materials to manufacture the Classic Ugg, the footwear was actually made in China and not Australia. It is arguable that what Ozwear did was technically correct, so why did they get in trouble?

Country of origin claims

Country of origin representations can be highly persuasive to consumers when deciding on which goods to purchase and many consumers are more inclined to purchase goods that have been manufactured in their country of origin to support local industry. Other businesses are therefore also disadvantaged by false country of origin claims, so the Australian Consumer Law prohibits businesses engaging in conduct that is misleading or deceptive or is likely to mislead or deceive or amounts to a false representation.

In order for manufacturers to be able to uphold their claim that goods were manufactured in a particular country or are a product of a particular country, the "substantial transformation" test must be satisfied. That is, the goods must be substantially transformed as a result of one or more process(es) undertaken in that country. Essentially this means the goods need to be "created" in the country of origin in a majority sense, and any minor changes such as packaging and mere assembly alone will not be sufficient to satisfy the test. In this case, Ozwear may have used the "best materials available in Australia" line and may have used Australian products when manufacturing the boots, however, the Classic Ugg Boots were created and substantially transformed in China. By using expressions such as "best materials available in Australia" and "100% Aussie Owned", along with the other ancillary claims made, an ordinary person would absolutely, reasonably, believe that the products were made in Australia and therefore would be misled. The consumer should not have to examine such claims forensically to determine if the overall impression they are getting is correct or potentially a mirage – this is why the ACCC took Ozwear to task here.

Lessons for brands and manufacturers

Businesses trading in Australia need to be aware and be careful of the representations they are making regarding their goods/produce they are selling, and country of origin claims like "Australian made" and "Australian owned" are particularly strong claims that need to be considered carefully. Australian consumers are more likely to support local industry and therefore using "Australian made" can have a highly persuasive effect. Simply using ingredients/components of goods that originated in a country is not enough on its own to warrant "origin representations" being made.

Caution needs to be exercised by businesses when labelling to ensure their logos/imagery and wording and the overall impression of their claims do not amount to false representations. Businesses

must only make origin claims when they can be certain that the goods/produce were actually a product of Australia, including by considering where the products were substantially transformed. What this ACCC result shows is that origin representations are taken seriously, even for smaller brands, and enforcement action will be undertaken.

Contact us

If you would like further information on country of origin representations and how they impact on you or your business, please contact one of our experts below.

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