



September 14, 2020

The Honorable Joseph J. Simons

Chairman

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Noah Joshua Phillips

Commissioner

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Rohit Chopra

Commissioner

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Rebecca Kelly Slaughter

Commissioner

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Christine S. Wilson

Commissioner

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable April J. Tabor

Secretary

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Made in USA Labeling Rule (MUSA Rulemaking, Matter No. P074204)

Federal Trade Commission Request for Comment: Notice of Proposed Rulemaking for “Made in USA” Claims and Other U.S.-Origin Claims on Product Labels

Dear Commissioners,

On behalf of the American Shrimp Processors Association (“ASPA”), representing more than 200 processors and more than 10,000 jobs along the United States coastline from Texas to North Carolina, I want to thank you for exercising your rulemaking authority to address “Made in USA” (“MUSA”) labeling and for working to strengthen the Federal Trade Commission’s (“FTC”) enforcement program. Thank you especially for this effort to increase compliance with MUSA labeling laws and to protect consumers from deceptive practices in the marketplace.

I. INTRODUCTION

ASPA strongly supports the FTC’s proposed rule for a variety of reasons, including the protection of the American consumer’s health and safety, its deterrence of fraudulent and deceptive MUSA claims, and its support for law-abiding companies with honest MUSA claims.

Although the COVID-19 outbreak impacts all sectors of the U.S. economy, its conditions affect American shrimp processors and harvesters the most of any other fishery. Restaurant closures are dealing a particularly harsh blow to the shrimp industry because, according to the U.S. International Trade Commission (“USITC”) data, 80% of all U.S. shrimp consumption occurs at the restaurant level.¹ Meanwhile, as online sales increase, American consumers do not know the country of origin of the shrimp they consume. By using its authority to enforce the MUSA Rule, the FTC will make Americans safer by filling a void in federal labeling accountability and providing certainty to the seafood market during this time of widespread economic instability.

II. SHRIMP IN THE U.S. MARKETPLACE

A. IMPORTS DOMINATE THE MARKET

Shrimp is the most consumed seafood product in the United States.² However, according to the most recent National Marine Fisheries Service (“NMFS”) report published in February 2020, *Fisheries of the United States, 2018*, U.S. domestic, wild-caught shrimp only supplies 6-10% of the American shrimp market.³ A staggering 90 to 94% of shrimp consumed in the U.S. is imported, substantially contributing to the total U.S. seafood deficit of \$19.5 billion in 2018.⁴

The U.S. market imported an astounding 1.53 billion pounds of foreign, primarily farm-raised shrimp in 2018.⁵ The U.S. imported \$40.3 billion of fishery products in 2018, representing a 6% (\$1.9 billion) increase from 2017 that was already 7% (\$2.5 billion) above 2016. Shrimp stands alone as the largest seafood product imported into the U.S., accounting for 27.7% of the total volume of seafood imports in 2018.⁶ While American per capita fish consumption grew to 16.1 pounds in 2018, shrimp remains the favorite.⁷

¹ See Certain Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam, Inv. Nos. 731-TA-1063, 1064, 1066-1068 (Second Review), Final Staff Report (April 12, 2017).

² See National Marine Fisheries Service (NMFS), *Fisheries of the United States, 2018* (Feb. 2020).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

The meteoric rise in imported shrimp is nothing new, of course. The numbers of imported shrimp has risen nearly each year since 1980. In 1980, imported shrimp amounted to a mere 200 million pounds.⁸ By 2018, imported shrimp amounted to 1.53 billion pounds.⁹

Imported shrimp did not come to dominate the U.S. market as a result of fair market forces or balanced competition. Rather, seafood industries in developing countries emerged deliberately as a result of generous government support programs providing billions of dollars in illegal and trade-distorting subsidies. Seafood exports are an important source of foreign exchange earnings and employment in these countries, providing the political and economic incentive for trade illegal subsidies, flagrant abuses of illegal veterinary drugs to increase production, and illegal, unreported, and unregulated (“IUU”) fishing. As a result, imported seafood products dominate the U.S. market and, because of the dangerous veterinary drugs used overseas, cause real and demonstrable public health concerns for the American consumer.

B. HEALTH & SAFETY OF THE AMERICAN CONSUMER

Foreign shrimp potentially places American consumers’ health at risk. ASPA has consistently demonstrated the burgeoning health crisis due to the widespread and illegal use of veterinary drugs and antibiotics in seafood. Antimicrobial resistance (“AMR”) prevents common drugs from treating microorganisms (bacteria, fungus, virus or parasite). AMR kills 29,500 Americans each year and the U.S. Center for Disease Control (“CDC”) projects 1 million deaths by 2050.¹⁰ In addition to the human toll, the economic cost of AMR could reach \$65 billion by 2050.¹¹ According to the World Health Organization (“WHO”), “the problem is so serious that it threatens the achievements of modern medicine” in a “post-antibiotic era.”¹² The COVID-19 crisis drastically illustrates the health and safety problems caused by viral and other infections that have no vaccination or treatment.

The U.S. Government Accountability Office (“GAO”) has published two recent Reports on Imported Seafood Safety (November 2019 and September 2017) that provide critical insight on the problems and inadequacies of the U.S. seafood import inspection regime administered by the Food and Drug Administration (“FDA”).¹³ While Customs and Border Protection (“CBP”) collects import entry data on all products, including seafood, the FDA is charged with examining and inspecting certain seafood imports.¹⁴ Much of this information sharing is electronic and the GAO recommends increased communication between CBP and FDA.

⁸ See Dr. Jack Isaacs, Louisiana Department of Wildlife and Fisheries (LDWF), Gulf of Mexico Commercial Shrimp Landings and Shrimp Product Import: 1980-2018.

⁹ See note 2, *supra*.

¹⁰ See U.S. Centers for Disease Control (USCDC), *Antibiotic Resistance Threats in the United States, 2013*; and The Organization for Economic Co-operation & Development (OECD), *Stemming the Superbug Tide*, OECD Health Policy Series (November 2018).

¹¹ *Id.*

¹² See World Health Organization (WHO), *Antimicrobial Resistance, Global Report of Surveillance (2014 Summary)*.

¹³ See U.S. Government Accountability Office, *Imported Seafood Safety: Actions Needed to Improve FDA Oversight of Import Alert Removal Decisions*, GAO-20-62 (Nov. 2019); and U.S. Government Accountability Office, *Imported Seafood Safety: FDA and USDA Could Strengthen Efforts to Prevent Unsafe Drug Residues*, GAO-17-443 (Sep. 2017).

¹⁴ U.S. Government Accountability Office, *Imported Seafood Safety: Actions Needed to Improve FDA Oversight of*

The FDA imported seafood program has two primary components: the Hazard Analysis Critical Control Point (“HACCP”) program and the port of entry inspection process.¹⁵ First, HACCP requires all foreign producers to ensure basic cleanliness and safety, but the HACCP program does not regulate or monitor the use of illegal drugs. Moreover, neither fish farms nor laboratories are subject to HACCP regulations or inspection. These fish farms and labs are the locus for the introduction of illegal drugs, yet they completely escape even basic HACCP regulation. In 2018, the FDA examined only 1% of all seafood products imported to the U.S.¹⁶

The second component of the FDA seafood import inspection regime is the port of entry inspection process. FDA’s port of entry inspection program is severely limited in scope. In FY 2015, FDA examined only 2.2% of all imported seafood and tested only 0.1% of 1 million seafood entry lines for illegal drugs. Of that 0.1%, 12% of shrimp tested positive for illegal drugs. In short, the FDA port of entry inspection process yields a miniscule 1 in 1,000 chance of foreign seafood being selected by FDA for illegal drug testing.¹⁷ FDA has the power to place firms and products on import alerts for inspection and also to remove them. However, of the 274 removal decisions from 2011 to 2018, 95% were removed without any audit conducted.¹⁸

III. ACCOUNTABILILTY GAP ALLOWS FOR DECEPTIVE LABELING

A. SUBSTANTIAL TRANSFORMATION & THE VOID IN FEDERAL MARKING AUTHORITY

In the context of seafood imports, three federal entities have authority over country-of-origin labeling. The U.S. Department of Agriculture (USDA), the CBP, and the FTC all have some roll to play; however, processed shrimp easily falls through the cracks of this tripartite regulatory structure.

The Tariff Act of 1930 requires that all imported goods “shall be marked in a conspicuous place as legibly, indelibly, and permanently...to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article.”¹⁹ The “country of origin” is defined as the country of manufacture, production or growth of an article of foreign origin entering the U.S.²⁰ But that article’s country of origin can change for customs purposes when it undergoes “substantial transformation,” a term of art used in the customs world that means some further work or material added to an article in another country.²¹ Substantial transformation occurs where the article takes on a new name, character, or use different from the

Import Alert Removal Decisions, GAO-20-62 (Nov. 2019).

¹⁵ U.S. Government Accountability Office, *Imported Seafood Safety: FDA and USDA Could Strengthen Efforts to Prevent Unsafe Drug Residues*, GAO-17-443 (Sep. 2017).

¹⁶ *Supra*, note 14, GAO-20-62 (Nov. 2019).

¹⁷ *Supra*, note 15, GAO-17-443 (Sept. 2017).

¹⁸ *Supra*, note 14, GAO-20-62 (Nov. 2019).

¹⁹ 19 U.S.C. § 1304(a).

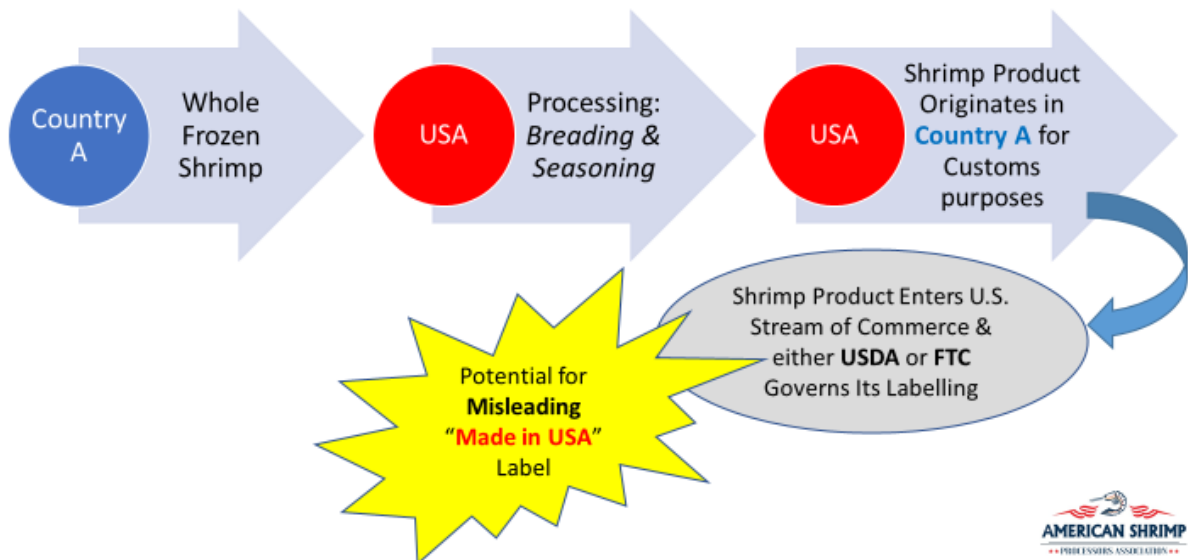
²⁰ 19 C.F.R. § 134.1(b).

²¹ *Id.*

original constituent article.²² The process of breading and/or seasoning imported shrimp effects a substantial transformation for CBP country-of-origin purposes.²³

The following flow chart depicts imported shrimp substantial transformation in action:

Foreign Shrimp Substantially Transformed After Entering U.S. Territory



Unfortunately, instead of overlapping authority, there is a void of accountability for imported shrimp when substantial transformation occurs inside U.S. territory. After the goods have entered the U.S. stream of commerce, authority for marking and labeling product origin is transferred from CBP to either the USDA’s country-of-origin (COOL) laws or to the FTC’s “Made in the USA” laws.²⁴ This is the point where importers and distributors take advantage of the void in shrimp labeling accountability and make deceptive and unqualified MUSA claims at the expense of the American consumer. As the examples that follow in Section B illustrate, companies apparently can utilize the “Made in the USA” label by simply adding seasoning or breading to imported shrimp, despite the “all or virtually all” FTC standard.

²² 19 C.F.R. § 35.

²³ See, e.g., Customs Rulings HQ 560931 (07/09/1998) and NY N281670 (01/03/2017).

²⁴ See, e.g., Customs Ruling NY R04129 (06/15/2006).

For purposes of retail establishments, the USDA’s COOL laws apply.²⁵ According to USDA’s COOL laws, seafood must be marked with the appropriate CBP country of origin. However, a codified loophole excludes processed foods²⁶ and restaurants²⁷ from USDA’s COOL marking requirements. Processed foods include “breaded shrimp” and are thus excluded from USDA’s COOL authority.²⁸ Therefore, the authority over marking and labeling of foreign shrimp that are breaded or seasoned after importation into the U.S. transfers to the FTC.²⁹

To the very heart of the proposed rule, the FTC’s “Made in USA” laws apply to products outside retail establishments, such as marketers, manufacturers, packagers and distributors, in order to prohibit unfair and deceptive practices affecting commerce.³⁰ The “Made in USA” label, whether an express or implied “American-made” claim, requires the product to meet the FTC’s “all or virtually all” standard, meaning that all or virtually all of the product should originate from the U.S. and should “contain no – or negligible – foreign content.”³¹ The following illustrative examples offer evidence of potentially misleading Made in the USA claims on imported product. As this Notice for Proposed Rulemaking (NPRM)³² describes, as well as past FTC policy publications³³ that describe the FTC’s authority, the FTC is the appropriate authority to fill this void and protect American consumers.

²⁵ 7 C.F.R. § 60, *et seq.*

²⁶ 7 C.F.R. § 60.119.

²⁷ 7 C.F.R. § 60.200(b).

²⁸ 7 C.F.R. § 60.119.

²⁹ The state of Louisiana recently addressed this loophole by enacting its own COOL law requiring restaurants serving imported shrimp and crawfish to disclose that fact on its menu or a posted sign. La. R.S. 40:5.5.4. Because of ASPA’s significant work to improve enforcement of this law, our investigators discovered the gap of federal labelling accountability with regard to substantially transformed shrimp products.

³⁰ 14 U.S.C. § 45(a).

³¹ 16 C.F.R. § 500; 62 F.R. 63756 (1997).

³² FTC, *Made in USA Labeling Rule*, 85 F.R. 43162-43165 (July 16, 2020).

³³ See FTC, *Issuance of Enforcement Policy Statement on “Made in USA” and Other U.S. Origin Claims*, 62 F.R. 63756-63771 (Dec. 2, 1997); and FTC, *Staff Report of the Bureau of Consumer Protection: Made in the USA, An FTC Workshop* (June 19, 2020).

B. EXAMPLES OF DECEPTIVE LABELING³⁴

Example #1: Upon information and belief this product contains imported shrimp. Yet, this company makes no country-of-origin claim on the front of its packaging, but on the back, it posts an American flag image along with the “Processed in the USA” claim:

Example #1

(1 of 2)



Example #1

(2 of 2)



³⁴ All photos in this section were captured and submitted by ASPA members.

Example #2: An in-store retail advertisement that is potentially deceptive and confusing to the ultimate purchaser. At the top, the retailer confusingly advertises its “Cajun Style Shrimp” as a “Product of Vietnam/Thailand/USA.” The bottom advertisement is for a cooked shrimp that is both a “Product of Thailand” and also “Made Right Here”:

Example #2



Example #3: Upon information and belief this product contains imported shrimp. The online advertisement contains potentially false and misleading claims. The details box indicates that the product is “Made in America” with an affirmative Yes. The second image depicts a label that contains no country of origin claim but denotes that the product is “Packed in USA.”

Example #3
(1 of 3)



Singleton Seafood 3 lb. Breaded Popcorn Shrimp - 4/Case
Item #: 872553222

Quantity Discounts
Buy 3 or more: **\$53.25/Case**
Buy 1-2: **\$55.49/Case**

1 **Add to Cart**

✓ Coated with seasoned breading for a delicious balance of crispy and juicy
 ✓ Serve over rice with vegetables or alongside a colorful selection of dipping sauces
 ✓ Frozen via the IQF process for juicy, fresh-tasting meat once thawed
 ✓ Includes 100 - 150 extra small, popcorn shrimp per pound
 ✓ Ships frozen

UPC Code: 0007020700372
Shipping:
 Usually Ships in 2-3 Business Days

SPEC:	
Features	Individually Quick Frozen (IQF)
Frozen Foods	Yes
Made in America	Yes

Details
 Deliciously crispy and perfectly seasoned, Singleton Seafood 3 lb. breaded popcorn shrimp are the perfect balance of crispy and juicy. Each bite crunches through the breading and melts into the tender juicy meat for a truly



Example #3
(2/3)



Singleton Seafood 3 lb. Breaded Popcorn Shrimp - 4/Case
Item # 872553322

10937

SINGLETON[®] IQF BREADED SHRIMP POP

4/3 LB

COOKING INSTRUCTIONS: DEEP FRY AT 350°F FOR 2 MINUTES, 30 SECONDS TO 3 MINUTES.
 INGREDIENTS: SHRIMP, BLEACHED WHEAT FLOUR, ENRICHED BLEACHED WHEAT FLOUR (NATURALLY REDUCED
 IRON), TRIMMING, BEACON BRINE, HYDROLYZED VEGETABLE OIL, MONOGLYCERIDES, MODIFIED CORN STARCH, OIL, FROSTING,
 CONTAINS 2% OR LESS OF EACH OF THE FOLLOWING: SALT, YEAST, SUGAR, LEAVENING, SODIUM ALUMINUM
 PHOSPHATE, SODIUM BICARBONATE, GARLIC POWDER, SPICES, CITRIC ACID, DIMPON POWDER, SESAME OIL,
 MONONATE AND DISODIUM GUANYLATE, SPICE EXTRACTS, STARCH, LECITHIN, WHEAT, CARAMEL
 COLOR, SODIUM TETRAPHOSPHATE (TO RETAIN MOISTURE), SODIUM BISULFITE (AS A PRESERVATIVE).
 CONTAINS CRUSTACEAN SHELL FISH (SHRIMP), WHEAT.

00070120109372

PACKED FOR:
SINGLETON SEAFOOD
P.O. BOX 790
DOVER, FL 33527

PACKED IN USA

NET WT 12 LB (5.45 kg)

Quantity Discounts

Buy 3 or more
\$53.25/Case

Buy 1 - 2
\$55.49/Case

1 Add to Cart

Wish List Report Problem

- ✔ Coated with seasoned breading for a delicious balance of crispy and juicy
- ✔ Serve over rice with vegetables or alongside a colorful selection of dipping sauces
- ✔ Frozen via the IQF process for juicy, fresh-tasting meat once thawed
- ✔ Includes 100 - 150 extra small, popcorn shrimp per pound
- ✔ Ships frozen

UPC Code: 00070120109372

Shipping:
Usually Ships in 2-3 Business Days

Details

Deliciously crispy and perfectly seasoned, Singleton Seafood 3 lb. breaded popcorn shrimp are the perfect balance of crispy and juicy. Each bite crunches through the breading and sinks into the tender, juicy meat for a truly mouthwatering experience. Plus, the spices add incredible depth to the

SPICES	
Features	Individually Quick Frozen (IQF)
Frozen Foods	Yes
Made in America	Yes
Meat Variety	Shrimp



Singleton Seafood 3 lb. Breaded Popcorn Shrimp - 4/Case
Item # 872553322

From **\$53.25/Case**

1 Add to Cart

[View of Singleton Seafood Shrimp](#)

Resources and Documents

[Nutrition](#)

A PDF viewer is required to download this document.

Resources

[How to Cook Fish: The Best Cooking Methods](#)

File Type: [No_Every Type](#)

Customer questions about this product

When will my refrigerated or frozen food product be shipped?

In order to control the amount of time in transit for these perishable items, they are only shipped on select days of the week based on which prep method you choose and the transit time to your location.

Ground: Orders ship Monday through Wednesday.
Second Day: Orders ship Monday through Wednesday.
Next Day: Orders ship Monday through Thursday.

Orders placed after the cutoff will ship the following Monday. If transit time allows for timely delivery to your location our warehouse may choose to ship some orders outside of these defined windows.

Frozen and refrigerated items cannot ship in a quantity that requires Common Carrier shipping, as well as cannot be shipped outside of the United States.

[Ask your own question!](#)

Attention CA Residents: Prop 65 Warning

Frozen Food
This item is shipped frozen. You will need to ensure the item is stored at 0 degrees Fahrenheit or below.

Made in America
This item was made in the United States of America.

Details

Deliciously crispy and perfectly seasoned, Singleton Seafood 3 lb. breaded popcorn shrimp are the perfect balance of crispy and juicy. Each bite crunches through the breading and sinks into the tender, juicy meat for a truly mouthwatering experience. Plus, the spices add incredible depth to the shrimp, which complements the meat's natural, fresh taste. Add this popcorn shrimp to your menu smothered in your favorite marinade or glaze, or served with an assortment of popular dipping sauces, from cocktail sauce and ketchup to sweet honey mustard. Or, toss in with a pan of sugar snap peas, water chestnuts, and carrots, cooking up a delicious stir-fry to serve with rice. However you prepare and serve them, this shrimp makes for a great-tasting appetizer or meal, easy to pop in your mouth and enjoy!

To prepare, deep fry the shrimp at 350 degrees Fahrenheit for 2 1/2 to 3 minutes, adding the delightful crisp and delicious golden hue. Each shrimp is IQF (individually quick frozen) to best preserve freshness, as well as to prevent large ice crystals, or blocks, from forming. This allows you to easily thaw the shrimp and get juicy bites of meat with a fresh, rich taste.

In 1945, Henry "Bootsy" Singleton entered the seafood business with a 14' x 16' fish house and a love for fishing. When hardships forced him to sell, he bought a couple shrimp trawlers and took up life on the sea. By 1968, Singleton Packing Corporation was distributing shrimp across America, and today it's distributing shrimp around the world. Though specializing in shrimp, Singleton Seafood now offers a wide range of seafood products, including crab, oysters, and flounder. Currently owned by Tampa Bay Fisheries, the company is ready more than ever to take on the ever-evolving needs of the worldwide foodservice industry.

Features

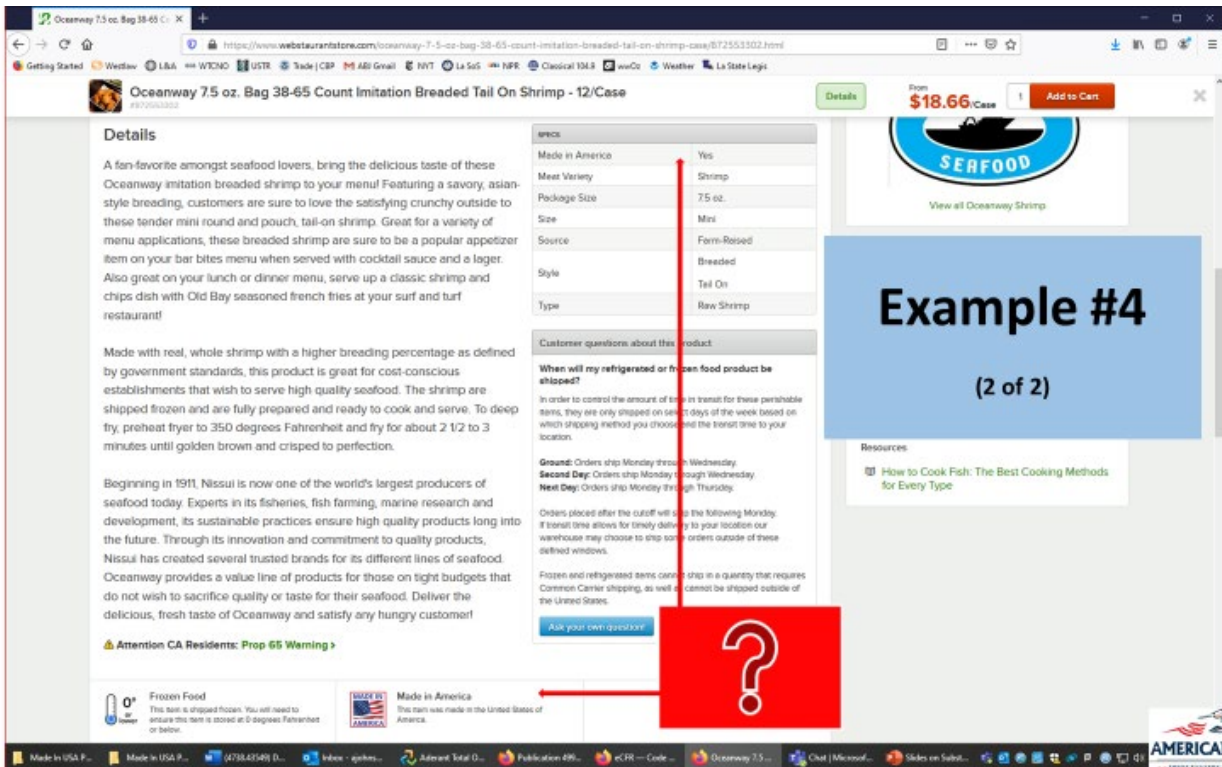
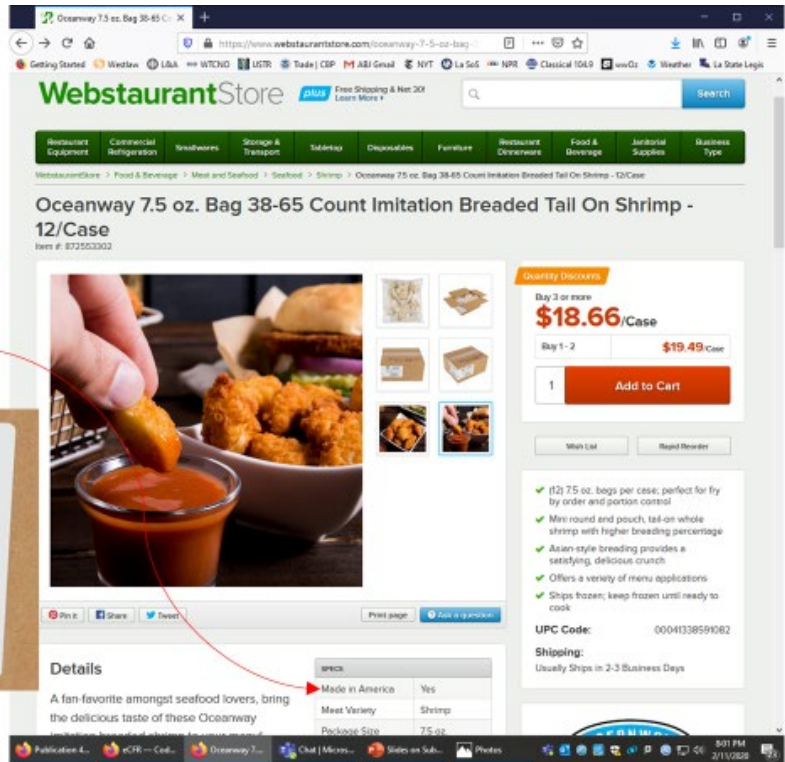
Features	Individually Quick Frozen (IQF)
Frozen Foods	Yes
Made in America	Yes
Meat Variety	Shrimp
Package Size	3 lb.
Size	Mini
Style	Breaded

Example #3
(3 of 3)



Example #4: Upon information and belief this product contains imported shrimp. The product’s digital advertisement sold online contains a potentially false and misleading “Made in America” claim:

Example #4
(1 of 2)



IV. RECOMMENDATION & CONCLUSION: THE FTC MUST FILL THE VOID

The FTC must utilize its authority to fill the void here in enforcing deceptive and fraudulent MUSA claims. First, the FTC should investigate businesses that label substantially transformed shrimp with “Made in USA” labels and also initiate enhanced “Section 5” reviews of deceptive practices, as authorized in the FTC Act, of misleading labels and advertisements on shrimp and other seafood products. An advertisement or label is unlawful if the FTC finds that it contains a material representation or material omission of fact that is likely to mislead consumers who are acting reasonably under the circumstances.

Furthermore, ASPA urges the FTC to coordinate with other agencies of jurisdiction (FTC, USDA, CBP) in order to track labeling of imported shrimp products to enhance traceability and make deceptive advertising and labeling more difficult. An interagency agreement or memorandum of understanding would be a good place to start.

Finally, because most shrimp is consumed at the restaurant level and to bring parity between commerce at the retail and restaurant streams of commerce, the FTC should recommend the imposition of mandatory COOL labeling at the restaurant level. All American consumers have the right to know their seafood origin and should be able to make informed choices about the seafood they eat. We respectfully request that the FTC strengthen its Section 5 reviews, enforcement policies, and civil penalties on those companies it finds to have acted unlawfully. We are happy to provide additional details and support to assist your efforts.

Sincerely,

A handwritten signature in black ink that reads "C. David Veal". The signature is written in a cursive style with a large, stylized "C" at the beginning.

C. David Veal, Ph.D., Director
American Shrimp Processor's Association
www.americanshrimp.com
director@americanshrimp.com
P.O. Box 4867
Biloxi, MS 39535
(228) 806-9600