

INTEGRATING COUNTRY OF ORIGIN INTO GLOBAL MARKETING STRATEGY: A REVIEW OF U.S. MARKING STATUTES

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Marketers are cognizant that the country of origin affects consumers product evaluations (Bilkey and Nes 1982; Erickson, Johansson and Chao 1984; Han 1989; Han and Terpstra 1988; Johansson, Douglas and Nonaka 1985). However, the continued globalization of markets has driven business into a worldwide search for low-cost, high-quality components and finished goods, often in countries that have not been historically associated with the manufacture of these types of products, confounding the use of country of origin in international product strategy development. Since astute international marketers can use marking statutes to develop proactive strategies which provide the entire benefit of country of origin, an enhanced understanding of how to obtain the desired country-of-origin designation could acutely improve a marketer=s ability in international strategy development.

The country of origin is determined by looking to the nature of the good being imported and the processes it has gone through and whether it has been substantially transformed. For purposes of country-of-origin markings, if goods are processed outside of the United States and are imported into the United States, the determination of the appropriate country-of-origin markings will depend on where a substantial transformation of that product has taken place. It may also be that U.S. federal courts will make this determination based on where the last substantial transformation took place if there were more than one. There are four tests of transformation which U.S. federal courts have used to determine whether substantial transformations have occurred: 1) the name, character and use test, 2) the essence test, 3) the value added test, and 4) the article of commerce test. One or more of these tests could be strategically beneficial in attempting to get desired country-of-origin markings.

The most used of the tests is the *name, character and use test*. If a product is to be considered to have been substantially transformed using this test, it is supposed to have ben transformed into something different with a unique name, character or use. The issue for the *essence test* is that there is also a substantial transformation and that the imported part actually gets incorporated into the final product and becomes the Aessence@ of that finished product. For the *value added test* the assumption is that neither the imported or domestic components or parts have value on their own merits. The value is created when they are combined into a finished good. Finally, the purpose behind the *articles of commerce test* is to determine whether a brand new article of commerce has actually been created as a result of the finishing process as applied to the imported parts or components. This test is of particular importance when determining the country-of-origin marking of products like computers or calculators where electronic circuits are involved in the finishing process.

By understanding how country-of-origin markings are prescribed, the potential customs considerations, and the tests which ordain application, marketers can begin to devise Atransformation strategies@ which blend the advantages of global sourcing with the desired country of origin to achieve maximum benefit. If an importer or marketer wishes to obtain a specific country-of-origin effect for imported articles, one or more of the four tests may assist in determining how to proceed. The first and most important point to consider is the type of product being marketed. It is evident from these four tests, the courts will be guided to a determination of the country of origin based on the processes the articles have undergone en route to the United States and the use of the products in the United States.