



[BILLING CODE: 6750-01S]

FEDERAL TRADE COMMISSION

[File No. 182 3095]

Sandpiper of California and PiperGear USA; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

DATES: Comments must be received on or before October 12, 2018.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

INFORMATION section below. Write: "Sandpiper of California and PiperGear USA" on your comment, and file your comment online at

<https://ftcpublish.commentworks.com/ftcsandpiperconsent> by following the instructions on the web-based form. If you prefer to file your comment on paper, write "Sandpiper of California and PiperGear USA; File No. 1823095" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580; or deliver your comment to: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Julia Solomon Ensor (202-326-2377) or Crystal Ostrum (202-326-3405), Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR § 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 12, 2018), on the World Wide Web, at <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 12, 2018. Write “Sandpiper of California and PiperGear USA; File No. 1823095” on your comment. Your comment - including your name and your state - will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <https://www.ftc.gov/policy/public-comments>.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftcsandpiperconsent> by following the instructions

on the web-based form. If this Notice appears at <http://www.regulations.gov/#!/home>, you also may file a comment through that website.

If you prefer to file your comment on paper, write “Sandpiper of California and PiperGear USA; File No. 1823095” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC Website at <http://www.ftc.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential” – as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively

sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC Website – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from the FTC Website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 12, 2018. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from Sandpiper of California, Inc. and PiperGear USA, Inc. (“Respondents”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement’s proposed order.

This matter involves Respondents’ marketing, sale, and distribution of bags and wallets with claims that the products are made in the United States.

According to the FTC’s complaint, Respondents represented that all of their products are all or virtually all made in the United States. In fact, more than 95% of Respondent Sandpiper’s products are imported as finished goods, and approximately 80% of Respondent PiperGear’s products are either imported as finished goods or contain significant imported components. Based on the foregoing, the complaint alleges that Respondents engaged in deceptive acts or practices in violation of Section 5(a) of the FTC Act.

The proposed consent order contains provisions designed to prevent Respondents from engaging in similar acts and practices in the future. Consistent with the FTC’s Enforcement Policy Statement on U.S. Origin Claims, Part I prohibits Respondents from making U.S.-origin claims for their products unless either: (1) the final assembly or processing of the product occurs in the United States, all significant processing that goes

into the product occurs in the United States, and all or virtually all ingredients or components of the product are made and sourced in the United States; (2) a clear and conspicuous qualification appears immediately adjacent to the representation that accurately conveys the extent to which the product contains foreign parts, ingredients or components, and/or processing; or (3) for a claim that a product is assembled in the United States, the product is last substantially transformed in the United States, the product's principal assembly takes place in the United States, and United States assembly operations are substantial.

Part II prohibits Respondents from making any country-of-origin claim about a product or service unless the claim is true, not misleading, and Respondents have a reasonable basis substantiating the representation.

Parts III through VI are reporting and compliance provisions. Part III requires Respondents to acknowledge receipt of the order, to provide a copy of the order to certain current and future principals, officers, directors, and employees, and to obtain an acknowledgement from each such person that they have received a copy of the order. Part IV requires each Respondent to file a compliance report within one year after the order becomes final and to notify the Commission within 14 days of certain changes that would affect compliance with the order. Part V requires Respondents to maintain certain records, including records necessary to demonstrate compliance with the order. Part VI requires Respondents to submit additional compliance reports when requested by the Commission and to permit the Commission or its representatives to interview respondent's personnel.

Finally, Part VII is a “sunset” provision, terminating the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

By direction of the Commission, Commissioner Chopra dissenting.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Rebecca Kelly Slaughter, In Which

Chairman Joe Simons Joins

When companies falsely claim that their products are made in the U.S.A., they take advantage of consumers who choose to spend their dollars supporting domestic products and the companies who expend resources in order to make the claim proudly and truthfully. Today, the Commission is announcing three enforcement actions¹

¹ To date, the Commission has initiated 25 enforcement actions arising from misleading U.S.-origin claims, targeting entities that engage in intentional deception or refuse to come into prompt compliance. FTC staff also works extensively with companies to achieve compliance in this area, issuing more than 130 closing letters addressing potential U.S.-origin claims. These letters highlight that where companies make errors or potentially deceptive claims to consumers, Commission staff works with them to quickly come into compliance. In addition to enforcement actions and compliance counseling, the Commission’s program to protect consumers from deceptive U.S.-origin claims involves significant business education efforts. In 1997, the Commission issued an Enforcement Policy Statement on U.S. Origin Claims that explains the types of U.S.-origin claims that can be made and the substantiation needed to support them. Commission staff has also issued comprehensive guidance, press releases and blogs in this area to promote compliance.

targeting companies and an individual who we allege falsely claimed their products were made in the U.S.A. in violation of Section 5 of the FTC Act. In *Patriot Puck*, respondent George Statler III and his companies marketed hockey pucks imported from China as “Made in America” and “The only American Made Hockey Puck!” The *Nectar Sleep* respondents included the statement “Designed and Assembled in the USA” in product descriptions for mattresses wholly imported from China. And in *Sandpiper/PiperGear*, respondents marketed imported backpacks and wallets on websites claiming “Featuring American Made Products” and shipped imported wallets with cards labeled “American Made.” The Commission’s complaints allege that these claims were plainly false and the respondents have all agreed to strong administrative consent orders.

Each of the administrative consent orders prohibits the respondents from making these types of claims in the future² and requires the respondents to engage in recordkeeping and reporting that will assist the FTC in monitoring compliance.³ Any

² Specifically, the orders prohibit respondents from making deceptive unqualified U.S.-origin claims about their products and lay out the type of substantiation required to make truthful claims. The orders also govern the manner and type of qualification needed to make a lawful qualified claim regarding U.S.-origin. The orders further prohibit respondents from making any country-of-origin claim about a product or service unless the claim is true, not misleading, and respondents have a reasonable basis substantiating the representation.

³ Each of the orders requires the respondents to file a compliance report within one year after the order becomes final and to notify the Commission within 14 days of certain changes that would affect compliance with the order. Respondents are also required to maintain certain records, including records necessary to demonstrate compliance with the order. The orders also require respondents to submit additional compliance reports when requested by the Commission and to permit the Commission or its representatives to interview respondents’ personnel. The orders remain in effect for 20 years.

violation of these orders can result in a civil penalty of over \$40,000 *per violation*.⁴

There is evidence that these potential penalties have served as powerful deterrents: to date the FTC has only had cause to initiate one contempt proceeding⁵ against the more than twenty prior respondents in cases involving U.S.-origin claims.

In this area, administrative consent orders securing permanent injunctive relief buttressed by the threat of significant civil penalties have been largely successful in keeping former violators on the straight and narrow and have no doubt served as a warning to others that false claims will be identified and pursued. Therefore, we are voting in support of the relief set forth in the final and proposed administrative orders announced today.

We write separately to highlight the possibility that the FTC can further maximize its enforcement reach, in all areas, through strategic use of additional remedies. For example, in the U.S.-origin claim context, there may be cases in which consumers paid a clear premium for a product marketed as “Made in the U.S.A.” or made their purchasing decision in part based on perceived quality, safety, health or environmental benefits tied to a U.S.-origin claim.⁶ In such instances, additional remedies such as monetary relief or

⁴ Outside of specific rules, the FTC does not have authority to seek civil penalties for violations of Section 5 of the FTC Act. The FTC does have authority to seek civil penalties for any violations of its administrative orders. *See* 15 U.S.C. 45(l) and 16 C.F.R. § 1.98(d) (2018).

⁵ *See* <https://www.ftc.gov/news-events/press-releases/2006/06/ftc-alleges-stanley-made-false-made-usa-claims-about-its-tools> (announcing settlement with Stanley Works that imposed a \$205,000 civil penalty for violating prior order regarding U.S.-origin claims).

⁶ Of the three cases the FTC is announcing today, we note that consideration of additional remedies such as notice could have been of particular value in the *Nectar Sleep* matter, which involved U.S.-origin claims about mattresses. The fact that purchasers of Nectar Sleep mattresses can seek a refund for any reason for 365 days after their original

notice to consumers may be warranted. Requiring law violators to provide notice to consumers identifying the deceptive claim can help mitigate individual consumer injury—an informed consumer would have the option to seek a refund, or, at the very least, stop using the product.

The Commission has already begun a broad review of whether we are using every available remedy as effectively as possible to fairly and efficiently pursue vigorous enforcement of our consumer protection and competition laws. If we find that there are new or infrequently applied remedies that we should be seeking more often, the Commission will act accordingly—and, where appropriate, signal to the public how we intend to approach enforcement. In our view, a thoughtful review and forward-looking plan is a more effective and efficient use of Commission resources than re-opening and re-litigating the cases before us today.⁷

purchase, <https://www.nectarsleep.com/p/returns/>, and that purchasers received mattresses with accurate country-of-origin labels, contributed to our decision to vote in favor of the final *Nectar Sleep* order.

⁷ It is worth noting that all of the cases announced today began well before the current complement of Commissioners were instated, and therefore before staff could reasonably have been expected to anticipate our particular priorities and views on enforcement. To renegotiate these settlements at this point, after litigation strategy was developed and executed, would require substantial investment of staff time and effort and diversion of resources from other important cases. A forward-looking set of remedy priorities will help staff develop litigation strategy in an efficient way.

Statement of Commissioner Rohit Chopra

Question Presented

Are no-money, no-fault settlements adequate to remedy serious violations of the FTC’s “Made in USA” standard?

Summary

- Sellers gain a competitive advantage when they falsely market a product as Made in USA, especially when this claim is closely tied to the development of the product’s brand.
- Third-party analysis suggests that Americans are often willing to pay significantly more for American-made goods compared to those made in China. Several of the matters under consideration by the Commission involve Made-in-USA fraud relating to products made in China.
- The Commission should modify its approach to resolving serious Made-in-USA fraud by seeking more tailored remedies that could include restitution, disgorgement, notice, and admissions of wrongdoing, based on the facts and circumstances of each matter.

Analysis and Discussion

The Power of Branding and Made in USA

While brand identity has historically been a major focus in markets for luxury goods, today it plays a key role in all segments of our economy. As advanced manufacturing and global supply chains challenge firms to find new ways to lower operating costs, consumer goods industries (including everything from apparel to

packaged goods) have focused intensely on building and cultivating their brands as a way to drive up margins through price and volume enhancements.

Branding is distinct from marketing and advertising. A successful brand is one that creates a clear identity that goes beyond specific product attributes. A brand identity connects with a consumer's values, aspirations, and sense of self.

A Made-in-USA claim can serve as a key element of a product's brand that communicates quality, durability, authenticity, and safety, among other attributes. Not only can it be a signal about specific product attributes but it can also contribute to the development of a brand identity that connotes a set of values, such as fair labor practices, to consumers.

Made-in-USA branding can also be used to fraudulently conceal countries of origin that may cause concerns for consumers. For example, in recent years, regulators have investigated serious health and safety problems with pet food¹ and drywall² imported from China, and the OECD estimates that China is the source of the vast majority of counterfeit goods imported to the US.³ Against this backdrop, slapping a "Made-in-USA" label on a good made abroad can be its own form of counterfeiting, replacing an unpopular attribute with one connoting quality, safety, and authenticity.

¹ Food & Drug Admin., Melanine Pet Food Recall of 2007 (May 2007), <https://www.fda.gov/animalveterinary/safetyhealth/recallswithdrawals/ucm129575.htm>

² Fed. Trade Comm'n, Tests for Defective Drywall (Dec. 2009), <https://www.consumer.ftc.gov/articles/0124-tests-defective-drywall>

³ *Global trade in fake goods worth nearly half a trillion dollars a year*, Org. for Econ. Co-Operation and Dev. (Apr. 18, 2016), <http://www.oecd.org/industry/global-trade-in-fake-goods-worth-nearly-half-a-trillion-dollars-a-year.htm>

In many cases, Americans are actually willing to pay a premium for goods that are made in our country, especially compared to those made in China. A 2012 survey by the Boston Consulting Group shows that more than 80% of Americans express a willingness to pay more for made-in-USA products,⁴ which is consistent with other surveys.⁵

Importantly, however, price premium does not always accurately capture the harm caused by Made-in-USA fraud. Especially in markets for commodity goods where consumers may be particularly price-sensitive, firms may make false claims to distinguish their brand or conceal unpopular countries of origin.

Whatever its purpose, cheating distorts markets in fundamental ways. It rips off Americans who prefer buying domestic goods. It also punishes firms that may bear higher costs to produce goods here, yet must compete on price or branding with firms that

⁴ *Made in America, Again: Understanding the value of 'Made in the USA'*, The Boston Consulting Group (Nov. 2012) [Hereinafter *Made in America, Again*].

⁵ See, e.g. *Made in America: Most Americans love the idea of buying a U.S.-made product instead of an import. But sometimes it's hard to tell what's real and what's not*, CONSUMER REPORTS (May 21, 2015),

<https://www.consumerreports.org/cro/magazine/2015/05/made-in-america/index.htm> [hereinafter *Made in America*] (reporting on a national survey finding that 60%+ of Americans would pay a 10% premium for Made-in-USA goods); *Price of patriotism: How much extra are you willing to pay for a product that's made in America?*, REUTERS (July 18, 2017), <http://fingfx.thomsonreuters.com/gfx/rngs/USA-BUYAMERICAN-POLL/01005017035/index.html> (reporting on a national survey finding that 60%+ of Americans would pay a premium of 5% or more). Of course, surveys reveal only Americans' *stated* willingness to pay a premium, not their actual buying behavior. But assuming Americans will pay *no* premium runs contrary to the available evidence, and firms' aggressive Made-in-USA branding shows they clearly see it as advantageous.

cheat. Finally, widespread deception sows doubt⁶ about the veracity of Made-in-USA claims, which may reduce the claim's value and discourage domestic manufacturing.

Backpacks, Hockey Pucks, and Mattresses

Today, the Commission is voting on three cases involving Made-in-USA fraud.⁷ The conduct of each of these companies was brazen and deceitful. In my view, each respondent firm harmed both consumers and honest competitors.

In the Sandpiper and Patriot Puck matters, the evidence suggests that the Made-in-USA claim was a critical component of the companies' brand identities. In the Nectar Sleep matter, the false Made-in-USA claim may have been asserted to convey health or safety benefits.

Sandpiper/PiperGear USA: Sandpiper/PiperGear USA ("Sandpiper") built its brand of military-themed backpacks and gear on patriotism. As detailed in the FTC's complaint, the company boasted in its promotional materials about its "US manufacturing," inserted "American Made" labels into products, and included the hashtag "#madeinusa" alongside social media posts.⁸ The company sold thousands of backpacks on American military bases overseas.

⁶ See *Made in America*, supra note 5 (reporting on a national survey finding that 23% of Americans lack trust in "Made in America" labels).

⁷ Claiming falsely that a product is Made in USA violates Section 5 of the FTC Act. Although the FTC brought a Made-in-USA case as early as 1940, Congress amended the FTC Act in 1994 to state explicitly that Made-in-USA labeling must be consistent with FTC decisions and orders. See 15 U.S.C. § 45a.

⁸ Compl. at ¶¶ 6-7.

In reality, Sandpiper imported the vast majority⁹ of its products from China or Mexico, a fact the firm actively sought to hide through its aggressive Made-in-USA branding.

Patriot Puck: Hockey pucks typically are manufactured to meet certain weight, thickness, and diameter specifications. These are commodity goods. Purchasers largely see competing pucks that boast similar specifications, so brand positioning can be especially salient.

Patriot Puck positioned its brand as the all-American alternative to imported pucks. The company literally wrapped its pucks in the flag, embossing each one with an image of an American flag. To drive home the point, the firm claimed its pucks were “Proudly Made in the USA,” “MADE IN AMERICA,” “100% Made in the USA!,” and “100% American Made!” The firm even claimed it made “The Only American Made Hockey Puck!”¹⁰

In reality, Patriot Puck imported all of its pucks from China.¹¹

That Patriot Puck priced its pucks similarly to other firms illustrates why sticker price premium alone is a poor proxy for the harm caused by Made-in-USA fraud, especially in markets for commodity goods. Hockey is closely associated with international competition, and Patriot Puck’s claim to offer the “only” puck made in America was a clear effort to create a brand identity that would distinguish its pucks from

⁹ According to the Complaint, more than 95% of Sandpiper’s products are imported as finished goods, while approximately 80% of PiperGear’s products are either imported as finished goods or contain significant imported components. *Id.* at ¶ 7.

¹⁰ Compl. at ¶ 9.

¹¹ The Commission has wisely named George Statler III, who operated the company, in its Complaint.

the competition. Moreover, by pricing its pucks similarly to its competitors, Patriot Puck led consumers to believe they were getting a great deal on American-made hockey pucks, when in fact they were overpaying for pucks made in China.¹²

Nectar Sleep: Nectar Sleep is a direct-to-consumer online mattress firm founded by Silicon Valley entrepreneurs. According to a CNBC profile of the company, Nectar competes with more than 200 firms to capture a slice of the \$15 billion mattress market.

Nectar mattresses are made in China, which may be a negative attribute for consumers who have health or safety concerns about Chinese-made mattresses.¹³ Perhaps for this reason, the company falsely represented to consumers that its mattresses were assembled in the US.

Nectar's conduct had clear consequences. Competitors who actually made mattresses domestically were undercut, and consumers looking for US-made mattresses – possibly for health or safety reasons – got ripped off. Further, Nectar may continue to profit from the lingering misperception that its mattresses are made in the US.

¹² Surveys show that Americans will pay a premium for US-made sporting goods relative to those made in China, meaning they effectively discount goods made in China. *Made in America, Again* at 1. And Americans may be particularly averse to buying patriotic-themed goods made in China. See, e.g., Matt Brooks, *US Olympic uniforms spark fury in Congress*, WASH. POST (July 13, 2012), https://www.washingtonpost.com/blogs/2012-heavy-medal-london/post/us-olympic-uniforms-spark-fury-in-congress/2012/07/13/gJQABvJmhW_blog.html?utm_term=.3d96e391f1dd

¹³ Such concerns may be tied to recent recalls of Chinese-made mattresses and bedding, and may be partially reflected in the premium Americans are willing to pay for US-made furniture over furniture made in China. See *Made in America, Again* at 6. In fact, numerous consumer reviews specifically focus on comparing US-made mattresses.

Addressing Made-in-USA Fraud Going Forward

Most FTC resolutions of Made-in-USA violations have resulted in voluntary compliance measures¹⁴ or cease-and-desist orders. Indeed, none of the three settlements approved today includes monetary relief, notice to consumers, or any admission of wrongdoing.

Going forward, in cases involving egregious and undisputed Made-in-USA fraud, I believe there should be a strong presumption against simple cease-and-desist orders. Instead, the Commission should consider remedies tailored to the individual circumstances of the fraud, including redress and notice for consumers, disgorgement of ill-gotten gains, opt-in return programs, or admissions of wrongdoing.

Some general principles can inform our approach to tailoring remedies. For firms that built their core brand identity on a lie, full redress or the opportunity for opt-in refunds may be appropriate, given the centrality of the false claim and its widespread dissemination.¹⁵ When refunds are difficult to administer or the firm lacks ability to pay,

¹⁴ Of course, when the violation is unintentional or technical in nature, less formal actions can be helpful, especially if the misstatement is quickly corrected. My comments are limited to matters where the violation was egregious.

¹⁵ Particularly for misbranded products, the FTC could likely show that a firm's Made-in-USA misrepresentations were widely disseminated, that they were of the kind usually relied on by reasonable persons, and that consumers purchased the product, thus making gross sales an appropriate starting point for calculating restitution. *See FTC v. Kuykendall*, 371 F.3d 745, 764 (10th Cir. 2004) (holding, in a contempt action, that after the Commission establishes a presumption of reliance, "the district court may use the Defendants' gross receipts as a starting point"). Importantly, if there was deception in the sale, defendants generally do not receive credit for the value of the product sold. *See FTC v. Figgie Int'l, Inc.*, 994 F.2d 595, 606-07 (9th Cir. 1993) ("The fraud in the selling, not the value of the thing sold, is what entitles consumers" to full redress.).

the Commission should at least seek notification to consumers or corrective advertising¹⁶ – especially in markets where country of origin bears on health or safety. Finally, if firms’ misrepresentations are undisputed and clear, the Commission should strongly consider seeking admissions – a form of accountability that is explicitly contemplated by our rules of practice.¹⁷

Admissions may have particular value in cases involving Made-in-USA fraud. In these cases, clear and undisputed facts may give the agency a strong basis to demand an admission from a firm. And if that firm lacks funds or records for consumer redress or disgorgement, admissions can be a powerful tool to give consumers, competitors, and counterparties tools to remedy harm, even when we cannot.¹⁸ Moreover, because the Commission is generally limited to seeking equitable rather than punitive remedies for first-time offenses, seeking admissions is among the most effective ways we can deter lawbreaking and change the cost-benefit calculus of deception.

I hope that the Commission will reexamine its approach to tackling Made-in-USA fraud. I believe we should seek more tailored remedies that vindicate the important goals of the program and send the message that Made-in-USA fraud will not be tolerated.

¹⁶ Corrective advertising can be important to preventing firms from continuing to profit from deception. As explained by then-Chairman Pitofsky after a corrective advertising order was upheld by the D.C. Circuit, “It is important for advertisers to know that it is not enough just to discontinue a deceptive ad, and that they can be held responsible for the lingering misimpressions created by deceptive advertising.” *See* Press Release, Fed. Trade Comm’n, Appeals Court Upholds FTC Ruling; Doan’s Must Include Corrective Message in Future Advertising and Labeling (Aug. 21, 2000), <https://www.ftc.gov/news-events/press-releases/2000/08/appeals-court-upholds-ftc-ruling-doans-must-include-corrective>

¹⁷ *See* 16 C.F.R. § 2.32.

¹⁸ For example, a factual admission may have a preclusive effect in a Lanham Act claim by a competitor.

Conclusion

Nectar Sleep, Sandpiper, and Patriot Puck clearly violated the law, allowing them to enrich themselves and harm their customers and competitors. Especially given widespread interest in buying American products, we should do more to protect the authenticity of Made-in-USA claims. I am concerned that no-money, no-fault settlements send an ambiguous message about our commitment to protecting consumers and domestic manufacturers from Made-in-USA fraud.

Going forward, I hope the Commission can better protect against harms to competition and consumers by seeking monetary relief, notice, admissions, and other tailored remedies. Every firm needs to understand that products labeled “Made in USA” should be made in the USA, and that fake branding will come with real consequences.

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